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TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,  
BLDG ONE, 2<sup>ND</sup> FLOOR, TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660 FAX (415) 274-0299  
WWW.SFGOV.ORG/TREASUREISLAND



TREASURE ISLAND DEVELOPMENT AUTHORITY  
REVISED MEETING AGENDA

May 9, 2007 - 1:30 P.M.

Room 400, City Hall  
1 Dr. Carlton B. Goodlett Place

Gavin Newsom, Mayor

DIRECTORS

Claudine Cheng, *President*  
Jesse Blout  
Jared Blumenfeld  
John Elberling, *C.F.O./Secretary*

Matthew Franklin  
Marcia Rosen  
Owen Stephens  
Supervisor Chris Daly (*Ex-Officio*)

Mirian Saez, Director of Island Operations  
Peter Summerville, Commission Secretary

9:05 a.m. msf  
DOCUMENTS DEPT.

MAY - 7 2007

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ORDER OF BUSINESS

1. Call to Order and Roll Call
2. Report by Director of Island Operations (*Discussion Item*)  
*Length of Item: 10 minutes*
3. Report by Mayor's Office of Base Reuse and Development (*Discussion Item*)  
*Length of Item: 10 minutes*
4. Communications (*Discussion Item*)  
*Length of Item: 5 minutes*
5. Report by the Treasure Island/Yerba Buena Island Citizen's Advisory Board (*Discussion Item*)  
*Length of Item: 5 minutes*

6. Ongoing Business by Directors (*Discussion Item*)  
*Length of Item: 5 minutes*
7. General Public Comment (*Discussion Item*) \*\*\**In addition to General Public Comment (Item #7), Public Comment will be held during each item on the agenda. \*\*\**  
*Length of Item: 10 minutes*
8. **CONSENT AGENDA**  
*Length of Item: 5 minutes*

*All matters listed hereunder constitute a Consent Agenda, are considered to be routine by the Treasure Island Development Authority Board and will be acted upon by a single vote of the Authority Board. There will be no separate discussion of these items unless a member of the Authority Board so requests, in which event the matter shall be removed from the Consent Agenda and considered as a separate item.*

- a.) Approving the Minutes of the April 11, 2007 Regular Meeting (*Action Item*)
  - b.) Approving the Minutes of the March 14, 2007 Regular Meeting (*Action Item*)
  - c.) Resolution Approving and Authorizing the Director of Island Operations to Enter into Utilities Services Contracts with the US Coast Guard (*Action Item*)
  - d.) Resolution Authorizing an Amendment to the Contract with Geomatrix Consultants, Inc. to Extend the Term Through June 30, 2008 and Increase the Contract by an Amount of \$180,000 for a Not to Exceed Amount of \$1,277,000 for Environmental Consulting Services (*Action Item*)
9. Resolution Approving the Budget of the Treasure Island Development Authority for Fiscal Year 2007-2008 and the Fiscal Year 2007-2008 Departmental Work Orders Contained Within, and Authorizing the Director of Island Operations to Submit the Proposed Budget to the Mayor of the City and County of San Francisco for Further Review and Inclusion in the City's 2007-2008 Budget (*Action Item*)  
*Presenter: Mirian Saez, Director of Island Operations*  
*Length of Item: 10 minutes*
  10. Resolution Authorizing the Director of Island Operations to Execute a Sublease with Bay Area Air Quality Management District on a Month to Month Basis through November 30, 2007 (*Action Item*)  
*Presenter: Marc McDonald, Facilities Director*  
*Length of Item: 5 minutes*
  11. Resolution Authorizing the Director of Island Operations to Execute a Sublease with Tri-California Events, Inc. on a Month-to-Month Basis Through November 30, 2007 (*Action Item*)

*Presenter: Marc McDonald, Facilities Director*  
*Length of Item: 5 minutes*

12. Resolution Authorizing the Director of Island Operations to Waive Outstanding Rent and Penalties and to Execute a Sublease with the Treasure Island Yacht Club for Building 298 for a Term Beginning on May 1, 2007 and Continuing On A Month-To-Month Basis through November 30, 2007 (*Action Item*)  
*Presenter: Marc McDonald, Facilities Director*  
*Length of Item: 5 minutes*
13. Resolution Approving and Authorizing the Director of Island Operations to Execute the Use Permit with Salt River Construction for the Use of Two Barges (*Action Item*)  
*Presenter: Marc McDonald, Facilities Director*  
*Length of Item: 5 minutes*
14. Resolution Establishing an Ad-Hoc Nominating Committee, Consisting of Three Members of the Treasure Island Development Authority ("TIDA") Board of Directors Appointed by the President, to Nominate Members of the TIDA Board to Serve as Officers of the TIDA Board in Accordance with the TIDA Bylaws (*Action Item*)  
*Length of Item: 5 minutes*
15. Informational Presentation on New Interim Leasing Policy (*Discussion Item*)  
*Presenter: Marc McDonald, Facilities Director*  
*Length of Item: 10 minutes*
16. Informational Presentation on a Request for Proposals to Market, Lease, and Operate Various Event Venues on Treasure Island (*Discussion Item*)  
*Presenter: Lori Mazzola, Special Events Coordinator*  
*Length of Item: 10 minutes*
17. Informational Presentation by San Francisco Police Department (*Discussion Item*)  
*Presenter: Captain Denis O'Leary, San Francisco Police Department*  
*Length of Item: 10 minutes*
18. Discussion of Future Agenda Items by Directors (*Discussion Item*)  
*Length of Item: 5 minutes*
19. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Development Authority Office, 410 Avenue of the Palms, Building 1, Treasure Island, and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

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The ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Code 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, telephone (415) 581-2300, fax (415) 581-2317 and web site <http://www.sfgov.org/ethics/>.

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Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the SOTF or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

















# T I H D I

Treasure Island Homeless Development Initiative



May 2, 2007

Mirian Saez, Director  
Treasure Island Development Authority  
410 Palm Ave., Bldg. 1  
San Francisco, CA 94130

Re: Informational Presentation of FY 2007-08 budget

Dear Director Saez:

After reviewing the budget and notes that were presented to the TIDA Board on April 11, 2007, we have few clarifying comments. We are very appreciated of the support we receive from TIDA and offer this information to be of assistance in the budgeting process.

Exhibit A, Notable Budget Considerations has two points under affordable housing. The first concerns the "subsidy" that TIDA gives to the affordable housing organizations under TIHDI's umbrella. The way it is written one might think that out of TIDA's annual revenues it gives approximately \$3million to these organizations for their housing operations. The point I think TIDA is trying to make is that TIDA does not receive any rent from these organizations (although they all pay a CAM charge) and if one was to evaluate the amount of this contribution that TIDA makes to support the City's affordable housing objectives and comply with the Base Closure and Homeless Assistance Act of 1994 it would be approximately \$3million. This point and evaluation has been done in the past to show that TIDA provides or pays for services (such as police and fire) to entities where it does not receive revenue. The Jobs Corps is also such an entity and I believe there are others too. If TIDA wants to compute how much it spends on services versus how much revenue it receives and from whom, that seems like a fair point. However, I believe this section may be misleading as written.

The second point regarding the Sharing Agreement also needs some clarification. While true it is a component of the affordable housing program, it should be noted that TIHDI receives revenue because TIHDI has "shared" some of its TIHDI units with TIDA in exchange for a revenue share. While perhaps a minor point to those familiar with the agreement, others might not make the connection that these units are in the 1996 Board of Supervisor approved TIHDI agreement and this agreement is beneficial to TIDA because it receives revenue from units that had been designated for use by TIHDI. As you know, 54 of these units will be returned to TIHDI for use by member agencies as of July 1, 2007.

We also noted that there was an error in the formula used to determine the total amount to be shared for TIHDI's remaining units (units not turned over to TIHDI). In trying to simplify the formula used to compute the sharing agreement, an equivalent factor (EF) was arrived at using incorrect data that was given to us over a year ago. After the TIDA meeting, I contacted your

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San Francisco, CA 94130  
415-274-0311  
[www.tihdi.org](http://www.tihdi.org)

staff about my concern that the new formula may not be correct and have been working with our consultant and the John Stewart Company to get the right information so that the correct EF could be arrived at. This will result in the projected amount of shared revenue for TIHDI to be correctly reflected in the TIDA budget. Please note that in correcting this error, TIDA should actually net more revenue from these units then cited in this draft presented to the TIDA Board on April 11<sup>th</sup>.

Lastly, under the Expenses Detail on page 3 which describes the proposed contract with TIHDI, it does not mention that out of the \$225,000 contract with TIHDI, \$100,000 is subcontracted to the Boys & Girls Club to provide after school and summer programming services for all island children and youth.

Thank you for the opportunity to clarify these budget items.

Sincerely,



Sherry Williams  
Executive Director



ATTACHMENT A		
OCCL DATE	REP DATE	LOCATION
4/1/2007	4/2/2007	1300 blk Gateview Dr.
4/2/2007	4/2/2007	600 blk Av H
4/6/2007	4/6/2007	1200 blk Northpoint Dr
4/7/2007	4/8/2007	1200 blk Mariner Dr.
4/8/2007	4/8/2007	Address withfield
4/10/2007	4/10/2007	300 blk Av C
4/10/2007	4/10/2007	Gateview Av & Northpoint
4/11/2007	4/11/2007	1200 blk Mariner Dr.
4/11/2007	4/11/2007	1200 blk Northpoint Dr
4/12/2007	4/12/2007	Address withfield
4/15/2007	4/15/2007	1100 blk Mason Ct.
4/18/2007	4/18/2007	1400 blk Flounder Ct.
4/19/2007	4/19/2007	Av B & 9th St.
4/19/2007	4/20/2007	Ozburn Ct. & Gateview
4/22/2007	4/22/2007	Av B & Gateview
4/22/2007	4/22/2007	100 blk 1st St.
4/22/2007	4/22/2007	1100 blk Kieppler Ct.
4/23/2007	4/23/2007	1200 blk Gateview Ct.
4/24/2007	4/24/2007	1400 blk Sturgeon St.
4/24/2007	4/24/2007	600 blk 8th St.
4/26/2007	4/26/2007	600 blk H St.
4/26/2007	4/26/2007	700 blk Gateview Ct.
4/27/2007	4/27/2007	Address withfield
4/28/2007	4/28/2007	1400 blk Chinoak Ct
4/28/2007	4/28/2007	Address withfield
4/28/2007	4/28/2007	400 blk 9th St.
4/29/2007	4/30/2007	1300 blk Gateview Dr.

Part 1 Crimes April, 2007

Robbery

Sex Offenses

Homicide

Vehicle Theft 1

Arson

Larceny 2

Total 13

TYPE	COMMENTS	CASE NUMBER
Suspicious Occurrence		070336848
Marijuana Offense		070337269
Burglary, Apartment	Suspect Unk	070354235
Malicious Mischief	Suspect Known	070358495
Domestic Violence		070360759
Theft, from building	Suspect Known	070367846
Malicious Mischief	Breaking windows/bus shells	070368593
Burglary, Residence	Suspect Unk	070371007
Burglary, Apartment	Suspect Unk	070372027
Burglary, Residence	Suspect Unk	070370946
Mental Health Detention		070373934
Suspicious Occurrence		070384793
Terrorist Threats		070398249
Malicious Mischief	breaking windows/bus shells	070402389
Malicious Mischief	Vandalism to Vehicle	070405585
Malicious Mischief	Breaking windows/bus shells	070412407
Weapon, Deadly, Exhibiting	Suspect Unk	070412071
Burglary, Apartment	Suspect Unk	070413483
Shooting into Dwelling	Suspect Unk	070416932
Assault, Aggravated	Suspect Unk	070419419
Suspicious Occurrence	Suspect Known	070425745
Terrorist Threats	Suspect Known	070426680
Theft, from building	Suspect Known	070432035
Battery, Domestic Violence		070437386
Suspicious Occurrence		070435283
Domestic Violence		070440771
Threats, Criminal	Suspect Unk	070440981
Stolen Vehicle, Motorcycle		

# Mirian Saez's plan for a smooth transition to a redeveloped Treasure Island

**M**irian Saez first set foot on Treasure Island when interviewing for the job of running the place. Now Saez, 50, is sitting in Adm. Chester Nimitz's wood-paneled office, which is larger than the mayor's, and has a better view.

## On background

Puerto Rican by way of Ohio. If I had the time, I would write a history of Lorain, Ohio. After World War II, U.S. Steel went to Puerto Rico and recruited 20 men. From the 20 men came this population of Puerto Ricans. It created this instant middle class for my family, which came from poverty.

## On leaving Lorain

I picked this small town named Cambridge, Ohio, and made a name for myself in the public housing arena.

## On picking public housing

I have no idea. That was the door that opened up for me and the door I walked through.

## On going to Washington

When the Democrats took over, I was asked to come to the Department of Housing and Urban Development in 1993 with the Clinton administration. Boom, I went, didn't hesitate.

## On coming to San Francisco

I have a domestic partner, Julian Potter, deputy chief of staff to Mayor Gavin Newsom. I met her in the halls of HUD in D.C. She came to work for Gavin in '05. I quickly followed. We celebrated 12 years together last Monday. We live in Noe Valley.

## On getting to the island

I was the real estate director over at the Port of San Francisco. I always wanted to be kind of a city manager. Now I get to be. I started right after Labor Day of '06.

## On getting around the island

I'm out all the time in one of those Navy vans, those pretty things out there. When they break, we just park them and pull out another one.

## On the islanders

About 3,000. We have one deer. I don't know how she got here. Must have been a good swimmer.

## On complaints from the islanders

Folks didn't feel they were connected to the city. They received fewer services. I needed to say to them every day, "No, we're part of the city. We're not stepchildren to the city anymore."

## On island amenities

Few. On Thursday nights I have this gal who sells rotisserie chickens out of a truck. This month we're bringing a taco truck to the island. I'm hoping that he comes on Wednesday nights, just to have a different food source.

## On transferring ownership from the Navy to the city

In 1997, when the base transfer legislation came out of the Clinton administration, folks thought it was going to be transferred, like, tomorrow. Then tomorrow was a year. Then it was two years. Then it was three years.

## On why the transfer has taken so long

What is the value of this island? That's the biggest hang-up.

## On how the city will pay the Navy

The city doesn't have any money to do any of this. Everything gets rolled into the developer's obligation.

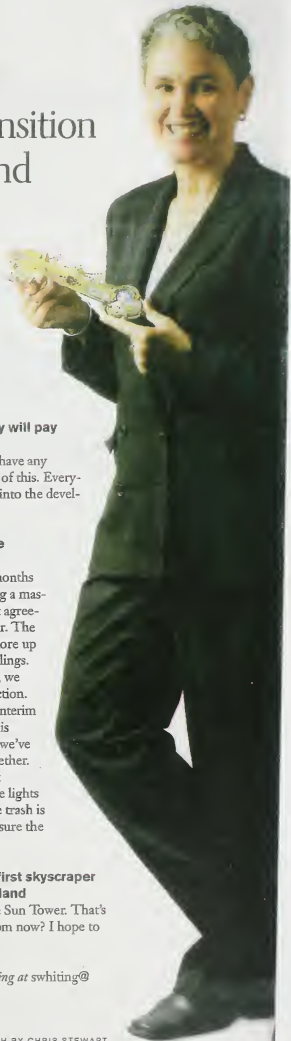
## On building the island city

We're 18 to 36 months away from signing a massive development agreement with Lennar. The first piece is to shore up the island with pilings. Once we're solid, we can start construction. During this new interim period, that I say is five, seven years, we've got to hold it together. I've still got to fix potholes, keep the lights on, make sure the trash is picked up. Make sure the housing is viable.

## On seeing the first skyscraper go up on the island

The return of the Sun Tower. That's what, 12 years from now? I hope to be here. ♦

E-mail Sam Whiting at [swhiting@schronicle.com](mailto:swhiting@schronicle.com).







regsmith@ix.netcom.com

05/03/2007 04:22 PM

Please respond to  
regsmith@ix.netcom.com

To Peter Summerville <Peter.Summerville@sfgov.org>

cc Desmond Crisis, Russell Breed

bcc

Subject TIYC Community Service Day

History:      ➡ This message has been forwarded.

Dear Mr. Summerville,

I wanted to make sure that you and the members of TIDA know about the Community Service Day the Treasure Island Yacht Club is offering to Island residents and visitors on Saturday, May 5, from 10-4 p.m. at the TIYC Clubhouse, located at 66 Clipper Cove Way.

We are partnering with the Treasure Island Museum Association and will have food available as well as treasures from the Island's past. Docents from the Museum Association will be present to talk about different aspects of TI history.

We look forward to hosting you and the Museum Association in what we hope will be a series of events that include TI residents and the Community at large. As you know, there are residents of the Island who are members of the Yacht Club and participate in our activities. Most importantly, you don't have to own a boat to become a member!

Best Wishes,

Reg Smith  
TIYC Commodore





Walt Bilofsky  
<bilofsky@toolworks.com>

03/19/2007 10:14 PM

Please respond to  
bilofsky@toolworks.com

To "Saez, Mirian" <Mirian.Saez@sfgov.org>, "Summerville,  
Peter (TIDA)" <Peter.Summerville@sfgov.org>

cc Claire Isaacs Wahrhaftig

bcc

Subject Report from Treasure Island Museum Association

History:

✉ This message has been replied to.

Dear Mirian,

I am delighted to report to you that the Treasure Island Museum Association held a Board meeting on March 10 at the TI Yacht Club. We had 8 Board members in attendance, two guests (including Ruth Gravanis), one host (Reg Smith), and a lot of enthusiasm.

Some months back we discussed a couple of potential projects with you: A historical themed reception, and an oral history of the GGIE.

The TI Yacht Club invited us to partner with them for an open house at the club May 5. Our Board was pleased to accept this invitation. It's not exactly a reception, but may give us ideas for one in future. One of our Board members, Art Banda, will install an exhibit of artifacts from Navy and GGIE history, from his private collection, just for this event. We are asking Board members and TIMA members to help out as docents. Once we get a little more organized, I am sure either we or TIYC will be asking you to suggest other invitees.

Another Board member, Anne Schnoebelen, who has written extensively about the GGIE and the art deco period, thinks there might be some oral history material that has already been gathered. She is looking into that.

We are going to meet again the weekend of March 31.

Claire and I are no longer "acting", we were confirmed as President and Vice President.

You and Peter have been copying both Claire and myself on emails. That will be particularly helpful as I will be out of the country during April.

We look forward to continued coordination with you in our work to preserve and present the history of Treasure Island.

Best regards,

Walt Bilofsky  
Vice-President, TIMA

cc: Peter Summerville



DATE	TYPE	LOCATION	EVENT	START	END	GUESTS
24 Apr 07	baseball	Sports Field	San Francisco Little League	4:30PM	6:30PM	
24 Apr 07	rugby	Sports Field	SF Golden Gate RFC	6:30PM	8PM	
25 Apr 07	baseball	Sports Field	San Francisco Little League	4:30PM	7PM	
26 Apr 07	baseball	Sports Field	San Francisco Little League	4:30PM	6:30PM	
26 Apr 07	rugby	Sports Field	SF Golden Gate RFC	6:30PM	8PM	
26 Apr 07	Photo shoot	Building 3 Lot	QAS Productions Inc	2PM	9PM	10
26 Apr 07		Chapel Lot	Chicken Hooray	3PM	7:30PM	
27 Apr 07	baseball	Sports Field	San Francisco Little League	4:30PM	7:30PM	
27 Apr 07	Memorial Service	Casa de la Vista	Juli Betwee	12PM	8PM	150
28 Apr 07	Prom	Building 1	Hillsdale High School	4PM	1AM	500
28 Apr 07	Wedding	Chapel/Casa	Ashley Agusthn/Joseph Scripplini	3:30PM	12AM	180
28 Apr 07	baseball	Sports Field	San Francisco Little League	9AM	12PM	
28 Apr 07	rugby	Sports Field	SF Golden Gate RFC	12:30PM	3:30PM	
28 Apr 07	baseball	Sports Field	San Francisco Little League	4PM	6:30PM	
29 Apr 07	baseball	Sports Field	San Francisco Little League	9AM	6PM	
29 Apr 07	Nature Walk	YBI	California Native Plant Society	9AM	3PM	40
29 Apr 07	Wedding	Chapel/Casa	Carol Underwood	11AM	9PM	180
30 Apr 07	baseball	Sports Field	San Francisco Little League	4:30PM	7:30PM	
01 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	6:30PM	
01 May 07	rugby	Sports Field	SF Golden Gate RFC	6:30PM	8PM	
02 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	7PM	
02 May 07	Photo shoot	Avenue of Palms	BBC	6PM	8PM	5
03 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	6:30PM	
03 May 07	rugby	Sports Field	SF Golden Gate RFC	6:30PM	8PM	
03 May 07		Chapel Lot	Chicken Hooray	3PM	7:30PM	
04 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	7:30PM	
05 May 07	baseball	Sports Field	San Francisco Little League	9AM	12PM	
05 May 70	rugby	Sports Field	SF Golden Gate RFC	12:30PM	3:30PM	
05 May 07	baseball	Sports Field	San Francisco Little League	4PM	6:30PM	

DATE	TYPE	LOCATION	EVENT	START	END	GUESTS
05 May 07	Wedding	Chapel/Casa	Molly Phelps/Kevin Dame	4PM	12AM	140
05 May 07	Prom	Building 1	Cassandra Grill Consulting/Pittsburg High	4PM	1AM	400
06 May 07	baseball	Sports Field	San Francisco Little League	9AM	6PM	
07 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	7:30PM	
08 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	6:30PM	
08 May 07	rugby	Sports Field	SF Golden Gate RFC	6:30PM	8PM	
09 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	7PM	
10 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	6:30PM	
10 May 07	rugby	Sports Field	SF Golden Gate RFC	6:30PM	8PM	
10 May 07		Chapel/Lot	Chicken Hooley	3PM	7:30PM	
11 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	7:30PM	
12 May 07	baseball	Sports Field	San Francisco Little League	9AM	12PM	
12 May 07	rugby	Sports Field	SF Golden Gate RFC	12:30PM	3:30PM	
12 May 07	baseball	Sports Field	San Francisco Little League	4PM	6:30PM	
12 May 07	Prom	Building 1	Ygnacio Valley High School	12PM	2AM	400
12 May 07	Wedding	Casa de la Vista	Corey Nordstrom/Chris Leaverton	12PM	12AM	170
13 May 07	baseball	Sports Field	San Francisco Little League	9AM	6PM	
13 May 07	Wedding	Casa de la Vista	Hugh Groman/Noah Guyn	10AM	6PM	225
14 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	7:30PM	
15 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	6:30PM	
15 May 07	rugby	Sports Field	SF Golden Gate RFC	6:30PM	8PM	
16 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	7PM	
17 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	6:30PM	
17 May 07	rugby	Sports Field	San Francisco Little League	6:30PM	8PM	
17 May 07		Chapel Lot	Chicken Hooley	3PM	7:30PM	
18 May 07	baseball	Sports Field	San Francisco Little League	4:30PM	7:30PM	
18 May 07	Wedding	Casa de la Vista	Noel Ecker/Jonathon Owens	5PM	1AM	130
19 May 07	baseball	Sports Field	San Francisco Little League	9AM	6:30PM	





















**AGENDA ITEM 8(c)**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of May 9, 2007**

**Subject:** Resolution Approving and Authorizing the Director of Island Operations to Enter into Utilities Services Contracts with the US Coast Guard. (Action Item)

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

**BACKGROUND**

Through the Treasure Island Development Authority (the "Authority"), the San Francisco Public Utilities Commission ("SFPUC") provides utility services to the US Coast Guard station on Yerba Buena Island. The US Coast Guard has submitted a proposed utility services contract to the Authority requesting that the Authority continue to provide utilities to the Coast Guard during the period June 1, 2007 through September 30, 2007.

The Authority performs its Base Caretaker duties on behalf of the United States Navy pursuant to the Base Caretaker Cooperative Agreement ("Agreement") as amended between United States Navy and the Authority. The agreement was initially signed on March 12, 1997 and is updated annually. Under the agreement, the Authority is referred to as the "Caretaker."

Obligations of the Caretaker are described generally in Articles I through XI of the Agreement. Specific duties of the Caretaker are described in Function Annexes 1 through 9. Function Annex 6 – Utilities Services, describes the responsibilities of the Caretaker with respect to operation and maintenance of the utilities systems at Treasure Island and Yerba Buena Island.

According to the Agreement, "The Caretaker will be responsible for purchase of all electricity, natural gas and water consumed on TI and YBI and for purchase of electric power provided to the east water pump station serving the base." (Cooperative Agreement Modification 13, Functional Annex 6 - Technical Execution Plan Utilities Management, Paragraph 9.0 **Purchase of Utility Commodities**).

Further, the Agreement states that "The Caretaker will enter into Utility Service Contracts (USCs) with all Federal users, including the Navy or the Navy's contractors as required. The USC shall contain pertinent information regarding the utilities agreement between the Caretaker and the specific Federal user, including rates." (Cooperative Agreement Modification 13, Functional Annex 6 - Technical Execution Plan Utilities Management, Paragraph 10.0 **Billing and Payment for Utilities Consumption**).

In accord with the Cooperative Agreement, the US Coast Guard enters into successive contracts with the Authority for the provision of utilities to the YBI Coast Guard Station. Through these contracts, the Coast Guard agrees to pay the SFPUC for utilities consumed at the YBI Coast

Guard station at rates approved by the SFPUC. The rates approved by the SFPUC are identical to the rates charged commercial subtenants on Treasure Island and Yerba Buena Island. The total value of the contract for the period June 1, 2007 through September 30, 2007 is Eighty Seven Thousand Four Hundred Twenty One Dollars and fifty four cents (\$87,421.54).

## **RECOMMENDATION**

Project Staff recommends that the Director of Island Operations be authorized to sign the Utilities Services Contract with the US Coast Guard for the period from June 1, 2007 through September 30, 2007, and be retroactively authorized to sign the Utilities Services Contracts for the periods from October 1, 2006 through March 31, 2007, April 1, 2007 through April 30, 2007, and May 1, 2007 through May 31, 2007.

Exhibit A- Utilities Services Contract between the Authority and the US Coast Guard for the period from June 1, 2007 through September 30, 2007.

Exhibit B --

- Utilities Services Contract dated September 29, 2006, for the period from October 1, 2006 through March 31, 2007,
- Utilities Services Contract dated March 22, 2007, for the period from April 1, 2007 through April 30, 2007,
- Utilities Services Contract dated April 30, 2007, for the period from May 1, 2007 through May 31, 2007.

1 [Resolution Authorizing US Coast Guard Utilities Agreement]

2 **Resolution approving and authorizing the Director of Island Operations to enter into a**  
3 **Utilities Services Contract with the US Coast Guard.**

4 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
5 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
6 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
7 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
8 conversion of former Naval Station Treasure Island (the "Base") for the public interest,  
9 convenience, welfare and common benefit of the inhabitants of the City and County of  
10 San Francisco; and,

11 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
12 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to  
13 Chapter 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the  
14 Authority as a redevelopment agency under California redevelopment law with authority over  
15 the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those  
16 portions of the Base which are subject to the Tidelands Trust, vested in the Authority the  
17 authority to administer the public trust for commerce, navigation and fisheries as to such  
18 property; and,

19 WHEREAS, The Board of Supervisors approved the designation of the Authority as a  
20 redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated  
21 February 6, 1998; and,

22 WHEREAS, On March 12, 1997, the Authority and the US Navy entered into the Base  
23 Caretaker Cooperative Agreement ("Cooperative Agreement") for the management and  
24 operation of the Base; and,  
25

1 WHEREAS, On October 1, 2000, the Cooperative Agreement was amended by  
2 Modification No. P00013, to delegate to the Authority, as the Base Caretaker, the  
3 responsibility for the purchase of all electricity, natural gas and water consumed on Treasure  
4 Island and Yerba Buena Island and to enter into Utilities Service Contracts with Federal users  
5 as required; and,

6 WHEREAS, The US Coast Guard has requested the Authority to enter into a Utilities  
7 Service Contract with the US Coast Guard for use of utilities at certain rates for the period  
8 June 1, 2007 through September 30, 2007; and,

9 WHEREAS, Utilities commodities purchasing, operation and maintenance  
10 responsibilities have been work ordered by the Authority to the San Francisco Public Utilities  
11 Commission (SFPUC) and the SFPUC has approved the rates described in the Utilities  
12 Service Contract between the Authority and the US Coast Guard; now, therefore, be it

13 RESOLVED, That the Authority Board of Directors hereby approves and authorizes th  
14 Director of Island Operations to execute the Utilities Services Contract between the Authority  
15 and the US Coast Guard for the period from June 1, 2007 through September 30, 2007 in  
16 substantially the form of agreement attached hereto as Exhibit A; and be it

17 FURTHER RESOLVED, That the Authority Board of Directors hereby retroactively  
18 approves and authorizes the Director of Island Operations to execute (i) the Utilities Services  
19 Contract dated September 29, 2006, for the period from October 1, 2006 through March 31,  
20 2007, (ii) the Utilities Services Contract dated March 22, 2007, for the period from April 1,  
21 2007 through April 30, 2007, and (iii) the Utilities Services Contract dated April 30, 2007, for  
22 the period from May 1, 2007 through May 31, 2007, each in the form attached hereto as  
23 Exhibit B.

24 ////

25 ////

1 CERTIFICATE OF SECRETARY

2 I hereby certify that I am the duly elected Secretary of the Treasure Island  
3 Development Authority, a California nonprofit public benefit corporation, and that the  
4 above Resolution was duly adopted and approved by the Board of Directors of the  
5 Authority at a properly noticed meeting on May 9, 2007.  
6

7 \_\_\_\_\_  
8 John Elberling, Secretary  
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RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT



## AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1

2

2. AMENDMENT/MODIFICATION NO.0001

3. EFFECTIVE DATE

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (If applicable)

P00003

06/01/07

24078976BL001

6. ISSUED BY

CODE

7. ADMINISTERED BY (If other than Item 6)

CODE

COMMANDER (Fp-2) USCG  
MAINTENANCE & LOGISTICS COMMAND PACIFIC  
BLDG. 54C, COAST GUARD ISLAND  
ALAMEDA, CA 94501-5100

SAME AS ISSUED BY

8. NAME AND ADDRESS OF CONTRACTOR (no., street, county, State and ZIP Code)

✓

9A. AMENDMENT OF SOLICITATION NO.

Treasure Island Development Authority  
For City and County of San Francisco  
410 Avenue of the Palms  
Treasure Island  
San Francisco, CA 94130

9B. DATE (SEE ITEM 11)

X

10A. MODIFICATION OF CONTRACT/ORDER  
HSCG89-07-C-6BL001

X

10B. DATED (SEE ITEM 13)  
09/29/06

CODE

FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended; ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 14, and returning 1 copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the Offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified. SEE Item 14 for extended receipt date.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

See Block 14, paragraph c.

NET INCREASE \$87,421.54

## 13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,

IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

✓	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc) SET FORTH IN ITEM 14, PURSUANT TO AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority). <b>Bilateral Agreement and FAR 52.217-9 Option to Extend the Term of the Contract (Mar 2000)</b>

E. IMPORTANT: Contractor is not ☐. ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

This modification is issued to extend the present contract by two months for the period of June 1, 2007 – Sept 30, 2007.

- a. FAR 52.241-3 Scope and Duration of Contract (FEB 1995) to reflect new expiration date, Sept 30, 2007.
- b. Replacement page 11 of 14 and Schedule of Supplies/Services for June and Sept 2007 is attached.
- c. Block 12. continued: 2/6/701/133/30/0/BL/37270/3ADMINUTIL \$7,442.28; 2/6/701/133/30/0/SY/72860/233U \$1,440.00; 2/6/701/133/30/0/SY/72861 \$5,676.00; 2/6/701/133/30/0/SH/72719/233U \$1,240.00; 2/6/701/133/30/0/E1/72860/233T \$2,800.00; 2/6/701/133/30/0/E1/72861/233T \$800.00; 2/6/701/133/30/0/E1/72710/233T \$600.00; 2/6/701/133/30/0/F1/72861/233R \$424.00; 2/6/701/133/30/0/F1/72710/233R \$464.00; 2/6/701/133/30/0/EN/37270/1217 \$6,653.28. Total \$87,421.54
- d. Total contract is increased BY: \$87,421.54 FROM: \$349,529.39 TO: \$436,950.93

Except as provide herein, all terms and conditions of the document referenced in item 9A or 10a, as hereto changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

MARY MYERS

CONTRACTOR/OFFEROR

15C. DATE SIGNED

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

(Signature of person authorized to sign)

(Signature of Contracting Officer)



## **SCHEDULE OF SUPPLIES/SERVICES**

### **June 01, 2007 – September 30, 2007**

CLINs 2001AA through 2003AD are for non-personal services for gas, electricity, water, and sewer as defined in the Cooperative Agreement No. N62474-97-2-003 P00001, Functional Annex 6 – Utility Services between the City and County of San Francisco (a Municipal Corporation) and the United States Navy. Payments will be in accordance with the amounts of actual Coast Guard usage. All services shall be performed in accordance with Functional Annex 6 and the terms and conditions of the solicitation/contract at Yerba Buena Island, California. The Contractor shall provide electricity, water, sewer, and gas utility services at Yerba Buena Island for U.S. Coast Guard's Sector San Francisco, Vessel Traffic Services San Francisco, Flag & Senior Officers Quarters A,B,C,8&9.

<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
3001	Sector San Francisco				
3001AA	Electricity	812	MWHR	142.75	\$115,913.00
3001AB	Water	1548	KGAL	5.40	\$8,359.20
3001AC	Sewer	1548	KGAL	5.75	\$8,901.00
	(Sewer rate represents 100% of water usage.)				
Total for Contract Line Item Number 1001AA through 1001AC				\$ <u>133,173.20</u>	

<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
3002	Vessel Traffic Service San Francisco				
3002AA	Electricity	100	MWHR	142.75	\$14275.00
3002AB	Water	52	KGAL	5.40	\$280.80
3002AC	Sewer	52	KGAL	5.75	\$299.00
	(Sewer rate represents 100% of water usage.)				
Total for Contract Line Item Number 1002AA through 1002AC				\$ <u>14,854.80</u>	

<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
2003	Flag & Senior Officers Quarters: A,B,C, 8& 9				
2003AA	Electricity	56	MWHR	142.75	7994.00
2003AB	Water	1500	KGAL	5.40	8100.00
2003AC	Sewer (Sewer rate represents 100% of water usage.)	1500	KGAL	5.75	8625.00
2003AD	Gas	208	MCF	8.57	1782.56
Total for Contract Line Item Number 2003AA through 2003AD				\$ <u>26,501.56</u>	

Total for Contract Line Numbers 2001AA through 2003AD \$ 174,529.56

terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vi) 52.222-41, Service Contract Act of 1965, as Amended (July 2005), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).

(vii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

## **II. THE FOLLOWING ADDITIONAL CLAUSES ARE INCORPORATED IN FULL TEXT.**

### **52.241-2 Order of Precedence-Utilities. (Feb 1995)**

In the event of any inconsistency between the terms of this contract (including the specifications) and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the terms of this contract shall control.

### **52.241-3 Scope and Duration of Contract. (Feb 1995)**

(a) For the period beginning at the start of the award October 1, 2006 – Sept 30, 2007, the Contractor agrees to furnish and the Government agrees to purchase Electricity, Water, Sewer, and Gas Utility





1. CONTRACT ID CODE		PAGE	OF PAGES
		1	2
<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			
2. AMENDMENT/MODIFICATION NO 0001	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (if applicable)
P00002	05/01/07	24078976BL001	
6. ISSUED BY	7. ADMINISTERED BY (if other than item 4)	CODE	
COMMANDER (1cp-2) USCG MAINTENANCE & LOGISTICS COMMAND PACIFIC R1 DG, 54C, COAST GUARD ISLAND ALAMEDA, CA 94501-5100		SAME AS ISSUED BY	

NAME AND ADDRESS OF CONTRACTOR (on above country, State and ZIP Code)	✓	9A. AMENDMENT OF SOLICITATION NO.
Treasure Island Development Authority For City and County of San Francisco 410 Avenue of the Palms Treasure Island San Francisco, CA 94130		9B. DATE (SEE ITEM 11)
	X	10A. MODIFICATION OF CONTRACT ORDER HSCG89-07-C-681.001
	X	10B. DATED (SEE ITEM 13) 09/29/06

CODE	FACILITY CODE
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS	
<input type="checkbox"/> The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning 1 copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the Offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified. SEE Item 14 for extended receipt date.	

12. ACCOUNTING AND APPROPRIATION DATA (if required)  
See Block 14, paragraph c. NET INCREASE \$43,632.39

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.	
✓	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority. The changes set forth in item 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A.)
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in pricing offer, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO AUTHORITY OF FAR 43.101(b)
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF
X	D. OTHER (Specify type of modification and authority) FAR 52.217-8 Option to Extend Services (NOV 1999) and Bilateral Agreement

14. IMPORTANT: Contractor is notified. [X] is required to sign this document and return 1 copy to the issuing office.

15. DESCRIPTION OF AMENDMENT/MODIFICATION (Specified by GSA in one heading, on facing side when it was a multiple page form).

This modification is issued to extend the present contract by one month for the period of May 1 - 31, 2007.

- FAR 52.241-3 Scope and Duration of Contract (FEB 1995) to reflect new expiration date, May 31, 2007.
- Replacement page h of 14 and Schedule of Supplies/Services for May 2007 is attached.
- Block 12 continued: 2/6/701/133/30/0/BL/37270/3ADMINUTIL \$3,721.14; 2/6/701/133/30/0/SY/72860/233U \$720.00; 2/6/701/133/30/0/SY/72861 \$2,838.00; 2/6/701/133/30/0/SH/72719/233U \$620.00; 2/6/701/133/30/0/E1/72860/233T \$1,400.00; 2/6/701/133/30/0/E1/72861/233T \$400.00; 2/6/701/133/30/0/E1/72710/233T \$300.00; 2/6/701/133/30/0/F1/72861/233R \$212.00; 2/6/701/133/30/0/F1/72710/233R \$332.00; 2/6/701/133/30/0/EN/37270/1217 \$33,189.25. Total \$43,632.39
- Total contract is increased BY: \$43,632.39 FROM: \$305,897.00 TO: \$349,529.39

Except as provide herein, all terms and conditions of the document referenced in item 9A or 10A, as herein changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF AUTHORITY (Signature)	15B. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
<i>Mary Myers</i>	MARY MYERS
15C. DATE SIGNED	15D. UNITED STATES OF AMERICA
3/20/07	
15E. SIGNATURE OF PERSON AUTHORIZED TO SIGN	15F. DATE SIGNED
<i>Mary Myers</i>	30 apr 07

STANDARD FORM 37 (REV. 11-1979) FORM 37-100 (10-1-1979)



## **SCHEDULE OF SUPPLIES/SERVICES**

### **May 01, 2007 – May 31, 2007**

CLINs 2001AA through 2003AD are for non-personal services for gas, electricity, water, and sewer as defined in the Cooperative Agreement No. N62474-97-2-003 P00001, Functional Annex 6 – Utility Services between the City and County of San Francisco (a Municipal Corporation) and the United States Navy. Payments will be in accordance with the amounts of actual Coast Guard usage. All services shall be performed in accordance with Functional Annex 6 and the terms and conditions of the solicitation/contract at Yerba Buena Island, California. The Contractor shall provide electricity, water, sewer, and gas utility services at Yerba Buena Island for U.S. Coast Guard's Sector San Francisco, Vessel Traffic Services San Francisco, Flag & Senior Officers Quarters A,B,C,8&9.

<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
2001	Sector San Francisco				
2001AA	Electricity	203	MWHR	142.75	28,978.25
2001AB	Water	387	KGAL	5.40	2,089.80
2001AC	Sewer	387	KGAL	5.75	2,225.25
	(Sewer rate represents 100% of water usage.)				
Total for Contract Line Item Number 1001AA through 1001AC				\$	<u>33,293.30</u>

<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
2002	Vessel Traffic Service San Francisco				
2002AA	Electricity	25	MWHR	142.75	3,568.75
2002AB	Water	13	KGAL	5.40	70.20
2002AC	Sewer	13	KGAL	5.75	74.75
	(Sewer rate represents 100% of water usage.)				
Total for Contract Line Item Number 1002AA through 1002AC				\$	<u>3,713.70</u>

<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
2003	Flag & Senior Officers Quarters: A,B,C, 8 & 9				
2003AA	Electricity	14	MWHR	142.75	1998.50
2003AB	Water	375	KGAL	5.40	2025.00
2003AC	Sewer (Sewer rate represents 100% of water usage.)	375	KGAL	5.75	2156.25
2003AD	Gas	52	MCF	8.57	445.64
Total for Contract Line Item Number 2003AA through 2003AD				\$	<u>6,625.39</u>

Total for Contract Line Numbers 2001AA through 2003AD \$ 43,632.39



		1. CONTRACT ID CODE		PAGE	OF PAGES
				1	2
<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>					
2. AMENDMENT/MODIFICATION NO.0001		3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (if applicable)	
P00001		04/01/07	24078976BL001		
6. ISSUED BY		CODE	7. ADMINISTERED BY (if other than item 4)	CODE	
COMMANDER (ep-3) USCG MAINTENANCE & LOGISTICS COMMAND PACIFIC BLDG. 94C, COAST GUARD ISLAND ALAMEDA, CA 94501-5100			SAME AS ISSUED BY		
8. NAME AND ADDRESS OF CONTRACTOR (name, street, county, State and ZIP Code)			9. A AMENDMENT OF SOLICITATION NO.		
Treasure Island Development Authority For City and County of San Francisco 410 Avenue of the Palms Treasure Island San Francisco, CA 94130			9B. DATE (SEE ITEM 11)		
			X 10A. MODIFICATION OF CONTRACT/ORDER HSCG89-07-C-6BL001		
			X 10B. DATE (SEE ITEM 13) 09/29/06		
CODE		FACILITY CODE			

## 11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning 1 copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the Offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified. SEE item 14 for extended receipt date.

## 12. APPOINTING AND APPROPRIATION DATA (if required)

See Block 14, paragraph c.

NET INCREASE \$43,632.39

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

Y	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in pricing offer, appropriation data, etc.) SET FORTH IN ITEM 14. PURSUANT TO AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority). <b>FAR 52.217-8 Option to Extend Services (Nov 1999), &amp; Bilateral Agreement</b>

14. IMPORTANT: Contractor is not ☐ ☒ required to sign this document and return 1 copies to the issuing office.

15. DESCRIPTION OF AMENDMENT/MODIFICATION (Formulated by UIC action Agency, including solicitation/contract number, manner where feasible)

This modification is issued to extend the present contract by one month for the period of April 1, 2007 - April 30, 2007.

- a. FAR 52.241-3 Scope and Duration of Contract (FEB 1995) is revised to reflect new expiration date, April 30, 2007. The pricing schedule for the month of April is on page 2.
- b. Block 12. continued: 2/6/701/133/30/0/BL/37270/3/ADMINUTIL \$3,721.14; 2/6/701/133/30/0/SY/72860/233U \$720.00; 2/6/701/133/30/0/SY/72861 \$2,838.00; 2/6/701/133/30/0/SH/72719/233U \$620.00; 2/6/701/133/30/0/FI/72860/233T \$1,400.00; 2/6/701/133/30/0/FI/72861/233T \$400.00; 2/6/701/133/30/0/EI/72710/233T \$300.00; 2/6/701/133/30/0/FI/72861/233R \$212.00; 2/6/701/133/30/0/FI/72710/233R \$232.00; 2/6/701/133/30/0/EN/72720/1217 \$33,189.25 Total \$43,632.39
- c. Total contract is increased BY: \$43,632.39 FROM: \$262,264.61 TO: \$305,897.00

Except as provide herein, all terms and conditions of the document referenced in item 9A or 10a, as hereto changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type name)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
Miriam Saez, Director		Trupti D. Sanghani Contracting Officer	
15B. LINE OF CONTRACTING OFFICER	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
<i>[Signature]</i>	3/22/07	Trupti D. Sanghani	3/22/07
Signature of person authorizing or sign		Signature of Contracting Officer	

UIC FORM 132-301  
OPTIONAL FORM 12

15-101

STANDARD FORM OF DEED, INSTRUCTIONS  
Prescribed by GSA, FAR 48 CFR 51.541



# **SCHEDULE OF SUPPLIES/SERVICES**

## **April 01, 2007 – April 30, 2007**

CLINs 1001AA through 1003AD are for non-personal services for gas, electricity, water, and sewer as defined in the Cooperative Agreement No. N62474-97-2-003 P00001, Functional Annex 6 – Utility Services between the City and County of San Francisco (a Municipal Corporation) and the United States Navy. Payments will be in accordance with the amounts of actual Coast Guard usage. All services shall be performed in accordance with Functional Annex 6 and the terms and conditions of the solicitation/contract at Yerba Buena Island, California. The Contractor shall provide electricity, water, sewer, and gas utility services at Yerba Buena Island for U.S. Coast Guard's Sector San Francisco, Vessel Traffic Services San Francisco, Flag & Senior Officers Quarters A,B,C,8&9.

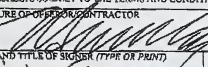
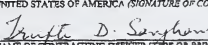
<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
1001	Sector San Francisco				
1001AA	Electricity	203	MWHR	142.75	28,978.25
1001AB	Water	387	KGAL	5.40	2,089.80
1001AC	Sewer	387	KGAL	5.75	2,225.25
	(Sewer rate represents 100% of water usage.)				
Total for Contract Line Item Number 1001AA through 1001AC				\$ <u>33,293.30</u>	

<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
1002	Vessel Traffic Service San Francisco				
1002AA	Electricity	25	MWHR	142.75	3,568.75
1002AB	Water	13	KGAL	5.40	70.20
1002AC	Sewer	13	KGAL	5.75	74.75
	(Sewer rate represents 100% of water usage.)				
Total for Contract Line Item Number 1002AA through 1002AC				\$ <u>3,713.70</u>	

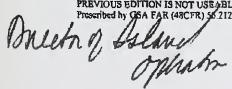
<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
1003	Flag & Senior Officers Quarters: A,B,C, 8& 9				
1003AA	Electricity	14	MWHR	142.75	1998.50
1003AB	Water	375	KGAL	5.40	2025.00
1003AC	Sewer (Sewer rate represents 100% of water usage.)	375	KGAL	5.75	2156.25
1003AD	Gas	52	MCF	8.57	445.64
Total for Contract Line Item Number 1003AA through 1003AD				\$ <u>6,625.39</u>	

Total for Contract Line Numbers 1001AA through 1003AD \$ 43,632.39



SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS				1. REQUISITION NUMBER 24078976BL001		PAGE 1 of 14	
OFFEROR TO COMPLETE BLOCKS 17, 17.23, 24 & 30							
2. CONTRACT NUMBER HSCG89-07-C-6BL001		3. AWARD/EFFECTIVE DATE 10/1/06		4. ORDER NUMBER		5. SOLICITATION NUMBER HSCG89-07-R-6BL001	
7. FOR SOLICITATION INFORMATION CALL: ▶		a. NAME Mary Myers, Contracting Specialist Email: MARY.K.MYERS@uscg.mil		b. TELEPHONE NUMBER (No collect calls) (510) 437-3844		6. SOLICITATION ISSUE DATE 8/16/06	
9. ISSUED BY CODE _____		10. THIS ACQUISITION IS UNRESTRICTED SET-ASIDE: 100 % FOR SMALL BUSINESS HUBZONE SMALL BUSINESS 8(A) X SOLE SOURCE NAICS: 22113 SIZE STANDARD: 55M		11. DELIVERY FOR FOB Destination UNLESS BOX IS MARKED SEE SCHEDULE		8. OFFER DUE DATE/LOCAL TIME <b>8/31/06 2PM PST</b>	
12. DISCOUNT TERMS				13a. THIS CONTRACT IS RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING	
14. METHOD OF SOLICITATION RFQ IFB <input checked="" type="checkbox"/> RFP							
15. DELIVER TO CODE SEE ATTACHED				16. ADMINISTERED BY SAME AS ISSUED BY CODE _____			
17. CONTRACTOR/FACILITY OFFEROR CODE _____ TREASURE ISLAND DEVELOPMENT AUTHORITY FOR CITY AND COUNTY OF SAN FRANCISCO 410 AVENUE OF THE PALMS TREASURE ISLAND, SAN FRANCISCO, CA 94130 DUNS# _____ TELEPHONE NO _____		18a. PAYMENT WILL BE MADE BY CODE _____ COMMERCIAL INVOICES USCG FINANCE CENTER P.O. BOX 4115 CHESAPEAKE, VA 23326-4109					
17B. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BELOW IS CHECKED SEE ADDENDUM			
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY		22. UNIT	
		See Attached ADDENDUM SCHEDULE OF SUPPLIES/ SERVICES				23. UNIT PRICE	
						24. AMOUNT	
25. ACCOUNTING AND APPROPRIATION DATA 2/6/70/133/30/0/E/37270/1217 SUBJECT TO FAR 52.232-19, AVAILABILITY OF FUNDS						26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$262,264.61	
27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED. 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.							
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>01</u> COPIES TO THE ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				29. AWARD OF CONTRACT, REF. <u>108</u> OFFER DATED <u>9/27/06</u> YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS.			
30a. SIGNATURE OF OFFEROR/CONTRACTOR 				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) 			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT) Michael A. Az				31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) Trupti Sanghani			
30c. DATE SIGNED 9/27/06				31c. DATE SIGNED 9/29/06			

AUTHORIZED FOR LOCAL REPRODUCTION  
 STANDARD FORM 1449 (Revised 4/2002)  
 PREVIOUS EDITION IS NOT USABLE  
 Prescribed by GSA FAR (48CFR) 55.212

  
 Director of Island Operations



**CONTINUANCE OF SF 1449 BLOCKS 19-24  
SCHEDULE OF SUPPLIES/SERVICES**

**BASE TERM    October 1, 2006 – March 31, 2007**

CLINs 0001AA through 0003AD are for non-personal services for gas, electricity, water, and sewer as defined in the Cooperative Agreement No. N62474-97-2-003 P00001, Functional Annex 6 – Utility Services between the City and County of San Francisco (a Municipal Corporation) and the United States Navy. Payments will be in accordance with the amounts of actual Coast Guard usage. All services shall be performed in accordance with Functional Annex 6 and the terms and conditions of the solicitation/contract at Yerba Buena Island, California. The Contractor shall provide electricity, water, sewer, and gas utility services at Yerba Buena Island for U.S. Coast Guard's Sector San Francisco, Vessel Traffic Services San Francisco, Flag & Senior Officers Quarters A,B,C,8&9.

<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
0001	Sector San Francisco				
0001AA	Electricity	1,217	MWHR	142.75	173,726.75
0001AB	Water	2,322	KGAL	5.40	12,538.80
0001AC	Sewer	2,322	KGAL	5.75	13,351.50
	(Sewer rate represents 100% of water usage.)				
Total for Contract Line Item Number 0001AA through 0001AC				\$	<u>199,617.05</u>

<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
0002	Vessel Traffic Service San Francisco				
0002AA	Electricity	150	MWHR	142.75	21,412.50
0002AB	Water	82	KGAL	5.40	442.80
0002AC	Sewer	82	KGAL	5.75	471.50
	(Sewer rate represents 100% of water usage.)				
Total for Contract Line Item Number 0002AA through 0002AC				\$	<u>22,326.80</u>

<u>CLIN NO.</u>	<u>SCHEDULE OF SUPPLIES/SERVICES</u>	<u>EST QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
0003	Flag & Senior Officers Quarters: A,B,C, 8 & 9				
0003AA	Electricity	88	MWHR	142.75	<u>12,562.00</u>
0003AB	Water	2,249	KGAL	5.40	<u>12,144.60</u>
0003AC	Sewer (Sewer rate represents 100% of water usage.)	2,249	KGAL	5.75	<u>12,931.75</u>
0003AD	Gas	313	MCF	8.57	<u>2,682.41</u>
Total for Contract Line Item Number 0003AA through 0003AD				\$	<u>40,320.76</u>

Total for Contract Line Numbers 0001AA through 0003AD      \$ 262,264.61

**I. ADDENDUM TO FAR 52.212-4 (Sept 2005) CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS**

a. Paragraph (g) Invoice: The Contractor shall submit no more than one invoice per month. Invoices for usage/recurring service charges shall be submitted to:

Original: Utilities/Telephones  
USCG Finance Center  
P.O.Box 4111  
Chesapeake, VA 23327

Copies: Send one appropriate copy to the following:

SECTOR SAN FRANCISCO  
Yerba Buena Island, Bldg 1  
San Francisco, CA 94130-5000

FLAG/SENIOR QUARTERS  
ISC Comptroller  
Coast Guard Island, Bldg. 42  
Alameda, CA 94501-5100

VTs SAN FRANCISCO  
Yerba Buena Island  
San Francisco, CA 94130-9309

Important: Insert Contract Number on ALL correspondence.

The following is provided for informational purposes only, refer to Clause 52.212-4 Contract Terms and Conditions – Commercial Items for specifics.

**Mandatory CCR Registration.** The U.S. Coast Guard uses the Central Contractor Registration (CCR) System run by the Department of Defense for making contractor payments. In order to receive payments, all contractors must be registered in this System. For more information on CCR, and to register on-line, you may visit the CCR website at [www.ccr.dlsc.dla.mil](http://www.ccr.dlsc.dla.mil).

Inquiries regarding payment should be directed to the Customer Service Representative, USCG Finance Center at (800-564-5504) or e-mail [csccall@fincen.uscg.mil](mailto:csccall@fincen.uscg.mil).

**52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. (Aug 2006)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

*[Contracting Officer check as appropriate.]*

X (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jul 1995), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

- \_\_\_ (2) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).
- \_\_\_ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
- \_\_\_ (4) [Reserved]
- \_\_\_ (5)(i) 52.219-6, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).
  - \_\_\_ (ii) Alternate I (Oct 1995) of 52.219-6.
  - \_\_\_ (iii) Alternate II (Mar 2004) of 52.219-6.
- \_\_\_ (6)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).
  - \_\_\_ (ii) Alternate I (Oct 1995) of 52.219-7.
  - \_\_\_ (iii) Alternate II (Mar 2004) of 52.219-7.
- \_\_\_ **X\_ (7) 52.219-8, Utilization of Small Business Concerns (May 2004)**  
**(15 U.S.C. 637(d)(2) and (3)).**
  - \_\_\_ (8)(i) 52.219-9, Small Business Subcontracting Plan (July 2005) (15 U.S.C. 637(d)(4)).
    - \_\_\_ (ii) Alternate I (Oct 2001) of 52.219-9.
    - \_\_\_ (iii) Alternate II (Oct 2001) of 52.219-9.
  - \_\_\_ (9) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
  - \_\_\_ (10)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEPT 2005) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
    - \_\_\_ (ii) Alternate I (June 2003) of 52.219-23.
  - \_\_\_ (11) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
  - \_\_\_ (12) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
  - \_\_\_ (13) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).
- \_\_\_ **X\_ (14) 52.222-3, Convict Labor (June 2003) (E.O. 11755).**
- \_\_\_ (15) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jan 2006) (E.O. 13126).
- \_\_\_ **X\_ (16) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).**
- \_\_\_ **X\_ (17) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).**
- \_\_\_ **X\_ (18) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).**
- \_\_\_ **X\_ (19) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998)**  
**(29 U.S.C. 793).**
- \_\_\_ **X\_ (20) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).**
- \_\_\_ **X\_ (21) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).**
- \_\_\_ (22)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).
  - \_\_\_ (ii) Alternate I (Aug 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- \_\_\_ (23) 52.225-1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a-10d).
- \_\_\_ (24)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (JUNE 2006) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78, 108-286), and 109-53.

- \_\_\_ (ii) Alternate I (Jan 2004) of 52.225-3.
- \_\_\_ (iii) Alternate II (Jan 2004) of 52.225-3.
- \_\_\_ (25) 52.225-5, Trade Agreements (June 2006) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
- \_\_\_ (26) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- \_\_\_ (27) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (42 U.S.C. 5150).
- \_\_\_ (28) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (42 U.S.C. 5150).
- \_\_\_ (29) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- \_\_\_ **X\_ (30) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).**
- \_\_\_ **X\_ (31) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).**
- \_\_\_ (32) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).
- \_\_\_ (33) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).
- \_\_\_ (34) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
- \_\_\_ (35)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).
- \_\_\_ (ii) Alternate I (Apr 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

- \_\_\_ (1) 52.222-41, Service Contract Act of 1965, as Amended (July 2005) (41 U.S.C. 351, *et seq.*).
- \_\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- \_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- \_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially

terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vi) 52.222-41, Service Contract Act of 1965, as Amended (July 2005), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).

(vii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

## II. THE FOLLOWING ADDITIONAL CLAUSES ARE INCORPORATED IN FULL TEXT.

### 52.241-2 Order of Precedence-Utilities. (Feb 1995)

In the event of any inconsistency between the terms of this contract (including the specifications) and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the terms of this contract shall control.

### 52.241-3 Scope and Duration of Contract. (Feb 1995)

(a) For the period On or about October 1, 2006 – March 31, 2007 or six months from Start of Award, the Contractor agrees to furnish and the Government agrees to purchase Electricity, Water, Sewer, and Gas Utility

Services in accordance with the applicable tariff(s), rules, and regulations as approved by the applicable governing regulatory body and as set forth in the contract.

- (b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.
- (c) The Contractor shall provide the Government with one complete set of rates, terms, and conditions of service which are in effect as of the date of this contract and any subsequently approved rates.
- (d) The Contractor shall be paid at the applicable rate(s) under the tariff and the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the period in which service is initially furnished and continuing for the term of this contract. Any minimum monthly charge specified in this contract shall be equitably prorated for the periods in which commencement and termination of this contract become effective.

#### **52.241-6 Service Provisions. (Feb 1995)**

*(a) Measurement of service.*

- (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the Contractor at its expense. When more than a single meter is installed at a service location, the readings thereof may be billed conjunctively, if appropriate. In the event any meter fails to register (or registers incorrectly) the service furnished, the parties shall agree upon the length of time of meter malfunction and the quantity of service delivered during such period of time. An appropriate adjustment shall be made to the next invoice for the purpose of correcting such errors. However, any meter which registers not more than 5% percent slow or fast shall be deemed correct.

- (2) The Contractor shall read all meters at periodic intervals of approximately 30 days or in accordance with the policy of the cognizant regulatory body or applicable bylaws. All billings based on meter readings of less than 30 days shall be prorated accordingly.

*(b) Meter test.*

- (1) The Contractor, at its expense, shall periodically inspect and test Contractor-installed meters at intervals not exceeding 1 year(s). The Government has the right to have representation during the inspection and test.
- (2) At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all such meters in the presence of Government representatives. The cost of such additional tests shall be borne by the Government if the percentage of errors is found to be not more than 5% percent slow or fast.

(3) No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of 10% percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall be given by the Contracting Officer to the Contractor regarding any material changes anticipated in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at each service location, but shall not be liable for damages, breach of contract or otherwise, to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities. If any such failure, suspension, diminution, or other variation of service shall aggregate more than 24 hour(s) during any billing period hereunder, an equitable adjustment shall be made in the monthly billing specified in this contract (including the minimum monthly charge).

**52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services. (Feb 1995)**

- (a) This clause applies to the extent services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give 30 day written notice of (1) the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and (2) any changes pending with the regulatory body as of the date of contract award. Such notice shall fully describe the proposed change. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor shall forward to the Contracting Officer a copy of such changes within 15 days after the effective date thereof. The Contractor agrees to continue furnishing service under this contract in accordance with the amended tariff, and the Government agrees to pay for such service at the higher or lower rates as of the date when such rates are made effective.
- (b) The Contractor agrees that throughout the life of this contract the applicable published and unpublished rate schedule(s) shall not be in excess of the lowest cost published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.
- (c) In the event that the regulatory body promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately provide a copy to the Contracting Officer.

The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) Any changes to rates or terms and conditions of service shall be made a part of this contract by the issuance of a contract modification unless otherwise specified in the contract. The effective date of the change shall be the effective date by the regulatory body. Any factors not governed by the regulatory body will have an effective date as agreed to by the parties.

**52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services. (Feb 1995)**

(a) This clause applies to the extent that services furnished hereunder are not subject to regulation by a regulatory body.

(b) After March 31, 2006, either party may request a change in rates or terms and conditions of service, unless otherwise provided in this contract. Both parties agree to enter in negotiations concerning such changes upon receipt of a written request detailing the proposed changes and specifying the reasons for the proposed changes.

(c) The effective date of any change shall be as agreed to by the parties. The Contractor agrees that throughout the life of this contract the rates so negotiated will not be in excess of published and unpublished rates charged to any other customer of the same class under similar terms and conditions of use and service.

(d) The failure of the parties to agree upon any change after a reasonable period of time shall be a dispute under the Disputes clause of this contract.

(e) Any changes to rates, terms, or conditions as a result of such negotiations shall be made a part of this contract by the issuance of a contract modification.

**III. THE FOLLOWING HSAR CLAUSE IS INCORPORATED IN FULL TEXT.**

**3052.209-70 PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES**

**(JUN 2006)**

(a) Prohibitions.

Section 835 of the Homeland Security Act, 6 U.S.C. 395, prohibits the Department of Homeland Security from entering into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation as defined in this clause, or with any subsidiary of such an entity. The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) Definitions. As used in this clause:

*Expanded Affiliated Group* means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except

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that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

*Foreign Incorporated Entity* means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

*Inverted Domestic Corporation.* A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

*Person, domestic, and foreign* have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(c) Special rules. The following definitions and special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(1) *Certain Stock Disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(i) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

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(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of Section 835 of the Homeland Security Act, 6 U.S.C. 395(b)(1).

(2) *Plan Deemed In Certain Cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(3) *Certain Transfers Disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special Rule for Related Partnerships.* For purposes of applying section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) *Treatment of Certain Rights.*

(1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

(i) warrants;

(ii) options;

(iii) contracts to acquire stock;

(iv) convertible debt instruments; and

(v) others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of Section 835.

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

\_\_\_ it is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73;

\_\_\_ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73, but it has submitted a request for waiver pursuant to 3009.104-74, which has not been denied; or

\_\_\_ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73, but it plans to submit a request for waiver pursuant to 3009.104-74.

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(g) A copy of the approved waiver, if a waiver has already been granted, or the waiver request, if a waiver has been applied for, shall be attached to the bid or proposal.

#### **IV. THE FOLLOWING FEDERAL ACQUISITION REGULATION (FAR) CLAUSES ARE INCORPORATED BY REFERENCE**

##### **52.252-2 Clauses Incorporated by Reference. (Feb 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

##### **Federal Acquisition Regulation (FAR):**

<http://www.arnet.gov/far/>

**FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999) 25 days**

**FAR 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR**

**(APR 1984)**

- FAR 52.228.5 INSURANCE – WORK ON A GOVERNMENT INSTALLATION  
(JAN 1977)  
FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDING, EQUIPMENT,  
AND VEGETATION (APR 1984)  
FAR 52.241-4 CHANGE IN CLASS OF SERVICE (FEB 1995)  
FAR 52.241-5 CONTRACTOR'S FACILITIES (FEB 1995)  
FAR 52.241-11 MULTIPLE SERVICE LOCATIONS (FEB 1995)

**V. THE FOLLOWING DEPARTMENT OF HOMELAND SECURITY  
REQUISITION REGULATION (HSAR) CLAUSES ARE INCORPORATED BY  
REFERENCE**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

**Homeland Security Acquisition Regulation (HSAR):**

[http://www.dhs.gov/interweb/assetlibrary/cpo\\_hsar\\_finalrule.pdf](http://www.dhs.gov/interweb/assetlibrary/cpo_hsar_finalrule.pdf)

- 3052.223-90 Accident and Fire Reporting (DEC 2003)
- 3052.242-71 Dissemination of Contract Information. (DEC 2003)
- 3052.242-72 Contracting Officer's Technical Representative. (DEC 2003)
- 3052.228-70 Insurance. (DEC 2003)

**VI. OTHER INCORPORATED CONTRACTUAL PROVISIONS AND CLAUSES:**

**1. CONTRACT ADMINISTRATION**

The Contracting Officer or the authorized representative location at the Maintenance and Logistics Command Pacific (f) Coast Guard Island, Bldg. 54C, Alameda, CA 94501-5100, telephone number (510) 437-3844 will be the Contract Administrator for this Contract.

**2. ADDRESS FOR ALL CORRESPONDENCE**

Commander (f)  
Maintenance and Logistics Command Pacific  
Attention: Mary Myers  
Coast Guard Island, Bldg. 54C  
Alameda, CA 94501-5100

**3. NOTE:** Include contract number on all correspondence.

**4. SPECIAL NOTE:**

The Offeror must complete and return the original solicitation documents, in particular the following: (1) Standard Form 1449, (sign and date blocks 30 a., b., and c.); (2) Addendum Schedule of Supplies/Services; (3) FAR 52.212-3 "Offeror Representations and Certifications – Commercial Items" (fill-in all appropriate blocks).

**5. EXERCISE OF OPTIONS:**

The Coast Guard may unilaterally exercise its option for continuing performance for this service under FAR 52.217-8, Option to Extend Services. Exercise of the option may be subject to the availability of funds Clause, FAR 52.232-18.

**6. LIASON**

The following individuals are Technical Points of Contract (POC) for the various utilities:

- a. Vessel Traffic  
CWO Randell Myers, 415-556-2950, ext. 106
- b. Senior Officer's Quarters  
Leo Manipon, 510-769-0831, X117
- c. Sector San Francisco for Operations  
LT Scott Petercin, Sector SF Engineer, 415-399-3504

**7. SAFETY**

During the execution of work, CCSF shall conform to the rules and regulations as set forth by OSHA Safety and Health Standards, 29 CFR Part 1926 – Safety and Health Regulations for Construction and Title 8, California Administrative Code – Construction Standards. When the standards differ, the more restrictive standard shall apply.

**8. SECURITY MEASURES**

Contractor Employees and Visitors Access to Government Facilities:

All personnel employed by the Contractor (including subcontractors) in the performance of this contract or any representative of the Contractor entering the Government installation, shall abide by all applicable security regulations and shall be subject to such security checks as may be deemed necessary to the Government. The Government reserves the right to direct the contractor to remove from performance under this contract any employee for misconduct or security reasons. This will not relieve the Contractor from contract performance or result in any equitable adjustment to the contract. Contractor employees shall not receive visitors without the expressed permission of the Contracting Officer or the Contracting Officer's Technical Representative (COTR).

**9. REFERENCE DRAWINGS**

The drawings listed below are included by reference only and will be made available by the COTR upon request. They are known not to accurately reflect all existing conditions.

Number	Title
EFA West C104378	Coast Guard Parcel Map (Note 1)
PWC 17,659	Water Distribution System
PWC 108,618	Sanitary Distribution System
PWC 108,619	Gas Distribution System

**10. BASE DRIVING REQUIREMENTS**

To drive on a Government installation, the Contractor's employee must have vehicle registration, a valid state driver's license and automobile insurance as required.

**11. LICENSES AND PERMITS**

The Contractor shall be responsible for obtaining any necessary licenses and permits.

**VII. LIST OF ATTACHMENTS**

1. Cooperative Agreement, Functional Annex 6, Utility Services
2. List of Utility Meters







**AGENDA ITEM 8(d)**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**May 9, 2007**

**Subject:** Resolution Authorizing an Amendment to the Contract with Geomatrix Consultants, Inc. to Extend the Term Through June 30, 2008 and Increase the Contract by an Amount of \$180,000 for a Not to Exceed Amount of \$1,277,000 for Environmental Consulting Services (Action Item)

**Contact:** Jack Sylvan, Office of Base Reuse and Development

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**SUMMARY OF PROPOSED ACTION**

Authorizing an fifth amendment to the contract with Geomatrix Consultants, Inc. extending the term of the contract for an additional 12 months and increasing the budget by \$180,000 for an additional year of Task A scope of services.

**BACKGROUND**

Geomatrix Consultants, Inc. (Geomatrix) was initially selected by the Department of Public Works (DPW) through a public Request for Proposals process as part of a pool of "as needed" consultants to provide environmental review and remediation activities. On February 12, 2003, the Authority authorized execution of a contract for a not-to-exceed amount of \$541,000 to provide technical services related to monitoring the Navy's environmental remediation activities at Treasure Island. The contract was first amended in June 2004 to extend the term through August 31, 2004. Between December 2004 and July 2006 the Authority approved Second, Third and Fourth contract amendments extending the term through June 30, 2007 and augmenting the budget consistent with additional years of scope to a total not-to-exceed amount of \$1,079,000.

At a February 22, 2006 meeting staff requested direction from the TIDA Board regarding the need for the environmental engineering services, currently provided by Geomatrix, going forward. Staff indicated that there were two primary options for contracting for the necessary services: (1) to rely on the prior competitive solicitation in which Geomatrix was selected and amend the existing contract, understanding that this would require approval of the contract from the Board of Supervisors who are required to approve TIDA contracts of more than \$1,000,000; or (2) initiate a re-bid of the contract process by issuing a Request for Proposals and engaging in a new competitive solicitation process. The TIDA Board directed staff to continue to contract with Geomatrix based on the following factors:

- The importance of maintaining continuity of oversight of the Navy's environmental program at a time when the Navy has budgeted significant funds in the coming fiscal year;
- A high level of satisfaction with the services being provided by Geomatrix and the established relationships Geomatrix has with the Navy and local, state and federal regulatory agencies;
- The potential problems associated with the learning curve that would be inherent with bringing a new engineering team up to speed; and,
- The understanding that there will be a more logical point at a later stage of the project in which to engage in a subsequent competitive selection process for continued environmental engineering services.

These factors remain the same for FY 2007-2008. Exhibit A contains the contract amendment consistent with this direction.

### Scope of Services

The scope of work for the Geomatrix contract consists of (i) oversight of the Navy's remediation program, and (ii) helping in the selection of a guaranteed fixed-price environmental engineering and remediation contractor and assisting the Authority in its negotiations with the contractor on a Guaranteed Fixed-Price Contract (GFP Contract). The two primary components of the Geomatrix scope of work are summarized here and are outlined in more detail in Exhibit A.

***Task A. TIDA Oversight of Navy Clean-up Program.*** As part of its transfer responsibilities, and pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Navy has been undertaking an environmental remediation program to meet federal and state requirements for transferring the base to the Authority in an environmental condition to support the Authority's redevelopment plans. The ultimate goal of the Navy's work is to issue a Finding of Suitability to Transfer (FOST) which would state that the property could be transferred and reused for the intended purposes. One of the Authority's primary responsibilities is to closely monitor the Navy's environmental remediation activities to ensure that the Navy achieves the appropriate clean-up levels for planned civilian use. The Geomatrix scope of work regarding this process is as follows:

- Attend and prepare information for monthly technical meetings that are held to review the status of on-going tasks and identify outstanding issues. **ONGOING**
- Attend and prepare information for additional technical meetings to address significant issues identified at the monthly meeting. **ONGOING**
- Attend and prepare materials for other supplemental meetings associated with risk communication and technical presentations to Authority management, regulators, and tenants. **ONGOING**
- Review Navy work plans and reports which document their approach, confirm agreements between interested parties, and comply with regulatory requirements. **ONGOING**

- At the Authority's request, oversee the Navy's field work or collect field samples to verify the adequacy of the Navy's work, or to fill a data gap critical to the Authority's needs that is not addressed by the Navy. **ONGOING**

***Task B. Assistance with Negotiating a GFP Contract as Part of Early Transfer Negotiations.***

The Authority has been in discussions with the Navy in pursuit of an Early Transfer for former NSTI. The first step in this process was the issuance of a request for qualifications (RFQ) and selection of an environmental engineering and remediation contractor (CH2M Hill) to complete the cleanup under a fixed price contract. Subsequently, Geomatrix's role will be to assist the Authority in its negotiations with the GFP Contractor for the terms of a fixed-price remediation contract within the larger context of the Early Transfer negotiations between the Authority and the Navy. Geomatrix's scope of work for this task consists of the following:

- Drafting a RFQ for a guaranteed fixed-price environmental engineering and remediation contractor. **COMPLETED**
- Evaluating bids, selecting a GFP Contractor, and negotiating a guaranteed fixed-price remediation contract with the GFP Contractor (CH2M Hill). **CONTRACTOR SELECTION COMPLETED**
- Provide detailed briefings to the GFP Contractor on the history and current status of environmental investigation and remedial activities at the site to allow the GFP Contractor to prepare as expeditiously as possible a proposed cost estimate and scope of work for the Environmental Services Cooperative Agreement (ESCA) with the Navy. **COMPLETED**
- Provide technical support to the Authority throughout the process of negotiating a GFP Contract with CH2M Hill, including peer review of documents and work products prepared by CH2M Hill. Within this context, Geomatrix will provide review of technical documents related to the GFP Contract, including the various legal documents necessary to complete an Early Transfer, to the extent the City determines that it needs such support from an independent consultant to assure that the GFP Contractor is acting in the best interest of the City.
- Assist the Authority in preparing and presenting technical and financial information to the public and City officials to aid in the decision-making process; and attending technical and strategy meetings regarding the above.

## **PROPOSED CONTRACT AMENDMENT**

***Scope of Services and Budget.*** The scope of work will continue to consist of two distinct tasks and this amendment only modifies the scope of work for Task A. The property transfer and environmental remediation negotiations with the Navy have taken longer than initially projected in the Geomatrix scope of work and remain on-going. As a result, the \$728,900 budget for Task A as amended in July 2006 will be expended as of June 2007. The proposed amendment extends the time period under which Geomatrix's services will be performed, thereby increasing the amount of services necessary for Task A activities. Approximately \$15,000 per month (or

\$180,000 per year) is necessary for Geomatrix to perform its Task A activities. This \$180,000 is the amount of this contract budget amendment increasing the Task A budget to \$908,900 and the total not-to-exceed amount of the contract to \$1,277,000. The contract will continue to be paid on a time and materials basis.

*Term.* The term of the amended contract will be extended through June 30, 2008.

*Funds.* The proposed modification augments the contract budget by \$180,000. These expenditures will be included in the redevelopment planning portion of the TIDA FY 2007-2008 budget. The entire amount of the \$180,000 contract budget increase will be reimbursed by the prospective master developer, Treasure Island Community Development (TICD), under the terms of the Exclusive Negotiating Agreement between TIDA and TICD.

*Board of Supervisors Approval.* TIDA contracts in excess of \$1,000,000 or 10 years require approval by the San Francisco Board of Supervisors. Consequently, approval of this contract amendment by the TIDA Board will be subject to further approval by the Board of Supervisors.

## RECOMMENDATION

Staff recommends approval of the amendment to the contract with Geomatrix based on the following factors:

1. The modification is consistent with the Authority's desire to continue to monitor the Navy's clean-up program to be consistent with civilian reuse of the property.
2. Maintaining continuity of this oversight at a key point in the Navy's clean up process merits amendment of the existing contract.
3. The contract modification does not change the fundamental scope of services outlined in the original contract.
4. The funds to pay for the modified contract budget are available via sources identified above.

## EXHIBITS

- A. Fifth Amendment to Contract with Geomatrix.

1 [Authorizing amendment to Contract with Geomatrix Environmental Consultants]  
2 Authorizing the Director of Island Operations to Execute an Amendment to the Contract  
3 With Geomatrix Consultants, Inc. to Extend the Term through June 30, 2008, to Modify  
4 the Scope of Services, and Increase the Contract by an Amount Not to Exceed \$180,000  
5 for a new Total Amount Not to Exceed \$1,277,000 for Environmental Consulting  
6 Services.  
7

8 WHEREAS, Former Naval Station Treasure Island is a military base located on  
9 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by  
10 the United States of America ("the Federal Government"); and,

11 WHEREAS, Treasure Island was selected for closure and disposition by the Base  
12 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
13 subsequent amendments; and,

14 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
15 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
16 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
17 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
18 conversion of the Base for the public interest, convenience, welfare and common benefit of  
19 the inhabitants of the City and County of San Francisco; and,

20 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
21 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to  
22 Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (1) designated the  
23 Authority as a redevelopment agency under California redevelopment law with authority over  
24 the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those  
25

1 portions of the Base which are subject to Tidelands Trust, vested in the Authority the authority  
2 to administer the public trust for commerce, navigation and fisheries as to such property; and,

3 WHEREAS, The Tidelands Trust prohibits the sale of trust property into private  
4 ownership, generally requires that Tidelands Trust property be accessible to the public and  
5 encourages public-oriented uses of Trust property that, among other things, attract people to  
6 the waterfront, promote public recreation, protect habitat and preserve open space; and,

7 WHEREAS, Geomatrix Consultants, Inc. ("Geomatrix") was selected by the City's  
8 Department of Public Works as an "as-needed" contractor to provide environmental review  
9 and remediation activities based on a public Request for Proposals process; and,

10 WHEREAS, Geomatrix performed services under a contract with DPW for several  
11 agencies and locations, including Treasure Island; and,

12 WHEREAS, The Authority amended the contract from time to time to extend the term  
13 and to directly contract with Geomatrix; and,

14 WHEREAS, On February 12, 2003, because of Geomatrix's knowledge of the Navy's  
15 environmental remediation program at the Base, the Authority authorized the Executive  
16 Director to execute a new contract with Geomatrix for an amount not to exceed \$541,000 to  
17 assist the Authority in drafting a Request for Qualifications for a guaranteed fixed price  
18 contractor and in evaluating bids and negotiating a contract with a guaranteed fixed price  
19 contractor to participate in the negotiations with the Navy for an Environmental Services  
20 Cooperative Agreement in connection with an Early Transfer of the Base and to monitor the  
21 Navy's on-going environmental remediation program; and,

22 WHEREAS, On June 9, 2004, the Authority extended the term of the Geomatrix  
23 contract for an additional two (2) months; and,  
24  
25

1 WHEREAS, On December 8, 2004, the Authority retroactively extended the term of the  
2 contract through June 30, 2005 and increased the not-to-exceed amount of the Geomatrix  
3 contract to \$719,000; and,

4 WHEREAS, On July 13, 2005, the Authority retroactively extended the term of the  
5 Geomatrix contract through June 30, 2006 and increased the not-to-exceed amount of the  
6 contract to \$899,000; and,

7 WHEREAS, On May 31, 2006, the Authority extended the term of the Geomatrix  
8 contract through June 30, 2007 and increased the not-to-exceed amount of the contract to  
9 \$1,097,000; and,

10 WHEREAS, The Authority believes that the on-going role of Geomatrix is important and  
11 merits amendment of the existing contract in order to (a) maintain the continuity of oversight of  
12 the Navy's environmental remediation program at a time when the Navy has budgeted  
13 significant funds in the coming fiscal year; (b) avoid the potential challenges associated with  
14 the learning curve inherent in selecting and bringing a new engineering contractor up to  
15 speed; and (c) continue to assist in negotiating a guaranteed fixed-price remediation contract  
16 with a guaranteed fixed price contractor; and,

17 WHEREAS, The Authority desires to amend the contract with Geomatrix to extend the  
18 term, increase the not-to-exceed amount, and modify the scope of services of the contract,  
19 consistent with the Authority's need for on-going monitoring of the Navy's environmental  
20 cleanup program; now therefore be it

21 RESOLVED, That the Authority hereby authorizes the Director of Island Operations to  
22 execute the amendment to the contract with Geomatrix Consultants, Inc. to extend the term  
23 thereof through June 30, 2008, increase the not-to-exceed amount of the contract to  
24 \$1,277,000, and modify the scope of services, all in substantially the form attached hereto as  
25 Exhibit A.

1  
2 CERTIFICATE OF SECRETARY  
3

4 *I hereby certify that I am the duly elected and acting Secretary of the Treasure*  
5 *Island Development Authority, a California nonprofit public benefit corporation, and*  
6 *that the above Resolution was duly adopted and approved by the Board of Directors of*  
7 *the Authority at a properly noticed meeting on May 9, 2007.*  
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11 John Elberling, Secretary  
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**TREASURE ISLAND DEVELOPMENT AUTHORITY  
CITY AND COUNTY OF SAN FRANCISCO**

**FIFTH AMENDMENT**

THIS FIFTH AMENDMENT (this "Amendment") is made as of July 1, 2007, in San Francisco, California, by and between Geomatrix Consultants, Inc. ("Contractor"), and the Treasure Island Development Authority, a California public benefit municipal corporation ("Authority"), acting by and through its Director of Island Operations.

**RECITALS**

WHEREAS, Authority and Contractor have entered into the Agreement (as defined below); and

WHEREAS, Authority and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the Authority agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated April 1, 2003 between Contractor and Authority, as amended by a First Amendment dated July 1, 2004, a Second Amendment dated November 10, 2004, a Third Amendment dated July 1, 2005 and a Fourth Amendment dated July 1, 2006.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

(a) **Section 2, Term of the Agreement,** is hereby amended to read as follows:

Subject to Section 1, the term of this Agreement shall be from April 1, 2003 to June 30, 2008.

Deleted: 7

(b) **Appendix A, Services to be Provided by Contractor,** is hereby amended to read as follows:

**Appendix A  
Services to be Provided by Contractor**

**1. Description of Services for Environmental Consulting.**

The City and County of San Francisco (City) established the Treasure Island Development Authority (Authority) to manage the conversion of former Naval Station Treasure Island from Navy use to civilian use. As part of its transfer responsibilities, and pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Navy has been undertaking an environmental remediation program to meet federal and state requirements for transferring the base to the Authority in an environmental condition to support the Authority's redevelopment plans. The ultimate goal of the Navy's work is to issue a Finding of Suitability to Transfer (FOST)

which would state that the property could be transferred and reused for the intended purposes. One of the Authority's primary responsibilities is to closely monitor the Navy's environmental remediation activities to assess whether the Navy achieves the appropriate clean-up levels for planned civilian use. For the five years, the Authority has retained a consultant, Geomatrix, to provide independent analyses of the thoroughness and defensibility of the environmental work conducted by the Navy, and to assess the compatibility of the Navy's proposed remediation activities with the Authority's redevelopment plans.

Geomatrix was initially selected by the Department of Public Works (DPW) as an "as needed" consultant for environmental review and remediation activities through a public Request for Proposals process and performed services under contract with DPW from November 1998 through June 2001. Since June 2001, Geomatrix has been under a direct contract with the Authority. The firm's knowledge of the Navy's environmental remediation program for T1 gained through its work for the Authority for the four years provides Geomatrix with a unique ability to provide the required services without duplicating previous expenditures.

For the environmental remediation program, Treasure Island and Yerba Buena Island were divided into 144 parcels (118 on T1 and 26 on YB1) which were then classified by environmental condition to enable the Navy and the Authority to identify properties that are suitable for transfer. A Restoration Advisory Board (RAB) was established to provide public review, input and comment on all aspects of the environmental remediation program.

In early 2003, the Authority formally requested that the Navy commence negotiating an "Early Transfer" to the Authority pursuant to CERCLA. An Early Transfer would involve a "fence-to-fence" transfer of the entire base pursuant to (i) a FOST for all "clean" property and (ii) a Finding of Suitability for Early Transfer (FOSET) for all remaining property. Under CERCLA, a FOSET involves different documentation than a FOST. Other transfer documents will need to be drafted and negotiated. For example, the Authority will need to negotiate a mutually acceptable Environmental Services Cooperative Agreement (ESCA) with the Navy to provide for completion of environmental remediation.

Once the property is transferred, the Authority will conduct the cleanup. The Authority will issue a request for qualifications (RFQ) for a remediation contractor to complete the cleanup under a fixed price contract. In order to negotiate and enter a fixed price contract, the selected contractor will be a participant in the negotiations with the Navy and regulators.

The City requires environmental consulting services to assist in drafting the RFQ for the remediation contractor, evaluate the bids and negotiate a fixed-price remediation contract with the selected contractor (resulting in the selection of CH2M Hill). The environmental consultant will not be eligible to bid as the remediation contractor. Once the remediation contractor is selected, the scope of services of the environmental consultant will substantially decrease, but the consultant would continue to support the City in negotiations with the Navy and regulators and on technical issues.

The early transfer process was expected to take up to 13 months to complete. Over the course of the negotiations during the past year and half, the Navy has changed its approach to considering an Early Transfer at NSTI. Consequently, the schedule for the work and the negotiations has been significantly extended, requiring additional work to what was originally anticipated. This additional work pertains to both:

- CH2M Hill's work assisting the Authority in negotiating an Early Transfer with the Navy, and
- Geomatrix's work assisting the Authority in negotiating a fixed-price remediation contract with CH2M Hill as part of the overall Early Transfer negotiations.

In the interim, the Navy has and will continue its current remediation program, and the Authority will continue to require the existing scope of services by the consultant to a limited extent.

The scope of work for consulting services to oversee the ongoing Navy remediation and for assistance with early transfer, including retaining a remediation contractor is described below. The proposed contract will fund Geomatrix's work through June 2008.

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#### A. Description of Services for Oversight of Navy Remediation.

Monthly technical meetings are held to review the status of on-going tasks and identify outstanding issues. The Navy and its consultants, the Authority and its consultants, regulators, and RAB members participate in these meetings. Additional meetings are scheduled to address significant issues identified at the monthly meeting. These technical working meetings clarify details of a specific field program or technical evaluation approach. Other supplemental meetings may be associated with assisting the Authority with risk communication, including technical presentations to Authority management, regulators, and tenants. In addition, the Navy prepares work plans and reports to document its approach, confirm agreements between interested parties, and comply with regulatory requirements, which also are reviewed by the Authority's consultant. Finally, the Authority occasionally may request that its consultant observe the Navy's field work or collect field samples to verify the adequacy of the Navy's work, or to fill a data gap critical to the Authority's needs that is not addressed by the Navy.

The process for completing environmental investigations at NSTI is fairly well defined; however, regulators commonly identify the need for previously unplanned activities (additional investigations, reports and meetings) as new field data are collected and analyzed. Additional work plans and reports are then prepared that, in turn, require additional review and additional meetings to address technical issues.

##### Scope of Work for Task A

Task A.1	Regularly scheduled BRAC Closure Team meetings (preparation, meeting attendance, documentation of meeting). Estimate = 26 meetings in San Francisco and 7 meetings in San Diego.	Deleted: 45
Task A.2	Supplemental technical meetings including conference calls (preparation, meeting attendance, documentation of meeting). Estimate = 50 meetings and 22 conference calls.	Deleted: 6
Task A.3	Review of technical documents including reports and work plans Estimate 170 documents.	Deleted: 125
Task A.4	Interim data review and preparation of written summary. Estimate = 26 data sets.	
Task A.5	Oversight of fieldwork including collections of split samples to assess data quality. Estimate = 3 assessments of fieldwork.	
Task A.6	Additional consultation (at request of Authority) and contingency. The Authority must preauthorize activities under this Task in writing.	

#### B. Description of Services for Assistance with Early Transfer.

Early transfer will require an additional and separate scope of work. The primary tasks for the environmental consultant include assisting the Authority with the following: drafting a request for qualifications for a guaranteed fixed-price environmental engineering and remediation contractor (GFP Contractor); evaluating bids, selecting a GFP Contractor, and negotiating a guaranteed fixed-price remediation contract with the GFP Contractor. The environmental consultant will provide detailed briefings to the GFP Contractor on the history and current status of environmental investigation and remedial activities at the site to allow the GFP Contractor to prepare as expeditiously as possible a proposed cost estimate and scope of work for the Environmental Services Cooperative Agreement (ESCA) with the Navy. The consultant will also provide technical support to the City throughout the process of negotiating a Guaranteed Fixed-Price Contract (GFP Contract), including the various legal documents necessary to complete an early transfer to the extent the City determines that it needs such support from an independent consultant to assure that the GFP Contractor is acting in the best interest of the City. Such assistance could include assisting the City in strategically evaluating remediation, transfer and insurance issues in an early transfer context; and in reviewing the Environmental Impact Report, FOST, FOSET, Covenant Deferral Request, ESCA, Consent Agreement, environmental insurance policies, and associated documents in relation to the GFP Contract. Such assistance will not include duplication of any services being provided by the GFP Contractor (CH2M Hill) as part of its assistance to the Authority with negotiating an Early Transfer. The consultant will assist the City in preparing and presenting technical and financial information to the public and City officials to aid in the decision-making process; and attending technical and strategy meetings regarding the above. Geomatrix will not be eligible to bid on the guaranteed fixed-price environmental engineering and remediation contract.

## Scope of Work For Task B

- Task B 1: Technical support in preparation for and at meetings and negotiations with GFP Contractor, Navy and regulators to discuss early transfer issues as related to the GFP Contract (preparation, meeting attendance, documentation of meeting). Estimate = 27 meetings and 26 conference calls
- Task B 2: Technical support in drafting a request for qualifications for a remediation contractor, evaluating bids and selecting a contractor. Estimate approximately 200 hours.
- Task B 3: Supplemental technical meetings including conference calls (preparation, meeting attendance, documentation of meetings related to negotiating a fixed price remediation contract, including cost cap insurance with the selected contractor). Estimate = 20 meetings and 20 conference calls
- Task B 4: Review of technical documents related to the GFP Contract, including an ESCA, FOST, FOSET, and cost cap and pollution legal liability insurance policies. Estimate = 16 documents.
- Task B 5: Preparing and presenting technical and financial information to the public and City officials to aid in the decision-making process. Estimate = 5 meetings.
- Task B.6: Additional consultation (at request of Authority) and contingency. The Authority must preauthorize activities under this Task in writing.

(c) Appendix B, Calculation of Charges, is hereby amended to read as follows:

### Appendix B Calculation of Charges

The total amount of this contract shall not exceed \$1,077,000

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#### Scope of Work For Task A

- Task A.1: Regularly scheduled BRAC Closure Team meetings (preparation, meeting attendance, documentation of meeting). Estimate = 56 meetings in San Francisco and 7 meetings held in San Diego.  
Budget: \$113,400 (Assumes average cost is \$1650 per meeting in San Francisco, \$3000 per meeting in San Diego).
- Task A.2: Supplemental technical meetings (preparation, meeting attendance, documentation of meeting). Estimate = 50 meetings and 22 conference calls.  
Budget: \$107,700 (Assumes average of \$2000 per meeting and \$350 per conference call)
- Task A.3: Review of technical documents including reports and work plans Estimate 170 documents.  
Budget: \$544,000 (Assumes average of \$3200 per document)
- Task A 4: Interim data review and preparation of written summary. Estimate = 26 data sets.  
Budget: \$52,000 (Assumes average of \$2000 per data set)
- Task A.5: Oversight of fieldwork including collections of split samples to assess data quality. Estimate = 3 assessments of fieldwork.  
Budget: \$15,000 (Assumes average of \$5000 per assessment),

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Task A.6: Additional consultation (at request of Authority) and contingency. The Authority must preauthorize activities under this Task in writing.

Budget: ~~\$76,800~~ (Assumes approximately 2% of Tasks One through Five)

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**TOTAL BUDGET FOR TASK A: \$908,900**

**Scope of Work For Task B**

Task B.1: Technical support in preparation for and at meetings and negotiations with GFP Contractor, Navy and regulators to discuss early transfer issues as related to the GFP Contract (preparation, meeting attendance, documentation of meeting). Estimate = 27 meetings and 26 conference calls

Budget: \$63,100 (Assumes 27 meetings at an average cost of \$2000 per meeting. Assumes 26 conference calls at \$350 per call).

Task B.2: Technical support in drafting a request for qualifications for a remediation contractor, evaluating bids and selecting a contractor. Estimate approximately 200 hours.

Budget: \$40,000 (Assumes \$20,000 to support drafting RFQ and \$20,000 for evaluation of bids and selecting a contractor).

Task B.3: Supplemental technical meetings including conference calls (preparation, meeting attendance, documentation of meetings related to negotiating a fixed price remediation contract, including cost cap insurance with the selected contractor). Estimate = 16 meetings and 16 conference calls

Budget: \$87,000 (Assumes 20 meetings with an average cost of \$4000 per meeting. We anticipate that the level of effort to prepare for these meetings will be significantly greater than for meetings under Task One. Assumes 20 conference calls at \$350 per call).

Task B.4: Review of technical documents related to the GFP Contract including an ESCA, FOST, FOSET, and cost cap and pollution legal liability insurance policies. Estimate 16 documents.

Budget: \$80,000 (Assumes average cost is \$5000 per document).

Task B.5: Preparing and presenting technical and financial information to the public and City officials to aid in the decision-making process. Estimate = 5 meetings.

Budget: \$50,000 (Assumes average cost is \$10,000 per meeting. We anticipate that a significant level of effort will be required to prepare presentations and materials for these meetings).

Task B.6: Additional consultation (at request of Authority) and contingency. The Authority must preauthorize activities under this Task in writing.

Budget: \$30,000 (Approximately 9% of Tasks One through Five).

**TOTAL BUDGET FOR TASK B: \$350,100**

**(d) Section 5, Compensation, is hereby amended to read as follows:**

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Island Operations, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed one million two hundred seventy-seven thousand dollars (\$1,277,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

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No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by [insert name of department] as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Form 7, "Prime Consultant/Joint Venture Partner(s) and Sub-consultant Participation Report." If HRC Form 7 is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Form 7 is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Form 7 is provided.

Following Authority's payment of an invoice, Contractor has ten days to file an affidavit using HRC Form 9, "Sub-Consultant Payment Affidavit," verifying that all subcontractors have been paid and specifying the amount.

**PERSONNEL (pursuant January 26, 2007 Schedule of Charges)**

Deleted: January 27, 2006

Personnel charges are for technical work, including technical typing, editing, and graphics involved in the preparation of reports and correspondence and for the time associated with production of such documents. Direct charges are not made for secretarial service, office management, accounting, and maintenance, because these items are included in overhead. Personnel category charge rates for Geomatrix Consultants, Inc. are listed below. Regional and other factors may influence rates charged for certain individuals. Rates for individuals will be provided on request.

Personnel Category	CURRENT HOURLY RATE
Principal Engineer/Scientist	\$225 - 350
Senior Decision Analyst	200 - 300
Senior Engineer/Scientist II	180 - 200
Senior Engineer/Scientist I	170
GIS Programmer/Web Designer II	135
Project Engineer/Scientist II	130
Project Engineer/Scientist I	120
Staff Engineer/Scientist II	110
Field Engineer	112
Staff Engineer/Scientist I	100
Senior Technician	85
Field Technician	80
CAD/Graphic Designer	90
Project Assistant	70
Technical Editor	85
Support Staff	62

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Specific hourly rates for the primary individuals working on the project are as follows:

Gary Foote	\$250
Jim McClure	\$200

Hourly rates for other Geomatrix experts who may work on the project from time-to-time are as follows:

Frank Szerdy (Engineer)	\$250
Jim Embree (Toxicologist)	325
Tom Delfino (Statistics and Decision Analysis)	250
Lester Feldman (Regulatory Affairs)	300

Time spent in travel in the interest of the client will be charged at hourly rates, except that no more than 8 hours of travel time will be charged in any day. When it is necessary for an employee to be away from the office overnight, actual costs, or a negotiated rate, will be charged for living expenses.

(c) Executive Director. All references in the Agreement to "Executive Director" are hereby amended to be "Director of Island Operations."

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3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and Authority have executed this Amendment as of the date first referenced above.

#### CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

#### AUTHORITY

Mirian Saez, Director of Island Operations  
On behalf of Treasure Island Development  
Authority

Approved as to form

Dennis J. Herrera  
City Attorney

By Deputy City Attorney

James C. Price, Vice President/CFO  
Geomatrix Consultants, Inc.  
2101 Webster Street 12<sup>th</sup> Floor  
Oakland, CA 94612







**Agenda Item 9**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of May 9, 2007**

**Subject:** Resolution Approving the Treasure Island Development Authority Fiscal Year 2007-08 Budget and Authorization to Enter into Work-Orders for Services with other City Departments for Operations, and Authorizing the Director of Island Operations to Submit the Proposed budget to the Mayor of City and County of San Francisco for further Review and Inclusion in the City's 2007-08 Budget. (Action Item)

**Contact:** Mirian Saez  
Director of Island Operations  
415-274-0660

**BACKGROUND**

This presentation is for consideration to approve the budget of the Treasure Island Development Authority ("TIDA") for Fiscal Year 2007-08 ("FY2007-08") and authorize the Director of Island Operations to submit the proposed budget to the Mayor of the City and County of San Francisco for further review and inclusion in the City's FY2007-08 Budget. Additionally, authorize the Director of the Island Operations to enter into Work-Orders with other City Departments for Operations.

TIDA was established as a California nonprofit public benefit corporation and designated certain powers under state and local legislation for the purpose of promoting the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the former Naval Station Treasure Island (the "Base"). Specifically, the Treasure Island Conversion Act of 1997 (the "Act"), passed by the California legislature in 1997, granted to TIDA the State's authority to administer the Tidelands Trust on Treasure Island/Yerba Buena Island and enabled TIDA to be designated as a redevelopment agency under the California Community Redevelopment Law. The Board of Supervisors of the City and County of San Francisco ("City") designated TIDA to manage the conversion of the former Base which includes portions of Yerba Buena Island, from military use to civilian reuse.

The specific mission of TIDA is to redevelop the former Base and manage its integration with the City in compliance with federal, state and city guidelines, including the California Tidelands Trust; create new housing and job opportunities for San Francisco residents, including assuring job opportunities for homeless and economically disadvantaged City residents; increase recreational and Bay access venues for San Francisco and Bay Area residents; and promote the welfare and well being of the citizens of San Francisco.

To achieve these goals, TIDA provides services that can be grouped into two broad categories described in more detail below:

1. Property management and municipal services.
2. The transfer of federal property to local jurisdiction and planning of redevelopment activities.

1. ***Property Management/Municipal Services.*** Under the provisions of a Cooperative Agreement between TIDA and the United States of America, acting by and through the Department of the Navy ("Navy"), TIDA serves as the property manager for the Base. TIDA is responsible for over all operations including building maintenance, utility operations and maintenance, landscaping, road repair and management of personal property. In addition, the Cooperative Agreement made TIDA and the City responsible for the provision of municipal services to Treasure Island and Yerba Buena Island, including public safety services, such as police and fire.

To offset the costs associated with property management and public service responsibilities, TIDA established two principal sources of revenue: (i) revenue generated from interim leasing of existing facilities; and (ii) revenue generated from special events on the Base. These functions are provided by Treasure Island Project Staff on the island. Currently, all Project Staff is classified as temporary employees of the City of San Francisco through the General Services Agency. Staff is housed on Treasure Island and provides a spectrum of services to the Island community by an MOU with the General Services Agency (GSA) and work-orders from other City departments including: the City Attorney Office, the Department of Public Works (DPW), SF Police, SF Fire, and SF Public Utilities Commission.

2. ***Transfer of Federal Property/Planning for Redevelopment Activities.*** As the designated Local Reuse Authority ("LRA"), TIDA, working through the Office of Base Reuse and Development, is negotiating with the Navy to acquire all real property at the Base that has not been transferred to other federal agencies or the State of California. On Treasure Island proper (the flat portion of the Base composed of Bay fill) approximately 365 acres, and on Yerba Buena Island approximately 73 acres, will be transferred to TIDA in the coming two to three years.

In an effort to bring closure to the transfer process, TIDA formally requested that the Navy commence negotiating an "Early Transfer" of the Base to TIDA, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). Under CERCLA, the Navy has an obligation to complete all environmental remediation activities at the Base before a change in ownership can occur. However, under the Defense Environmental Program, the Navy is authorized to enter into an agreement with local agencies, such as TIDA, to carry out aspects of the Navy's remedial obligations with funds provided by the Navy after an Early Transfer. The terms for transferring the Navy's remedial obligations to TIDA, including the amount of funds to be made available for investigation and remediation of contamination at the Base, will be set forth in an Environmental Services Cooperative Agreement ("ESCA") to be negotiated between the Navy and TIDA. The Navy and TIDA are in negotiations for an Early Transfer pursuant to an ESCA.

At the same time TIDA is negotiating with the Navy on the ESCA, TIDA also will need to negotiate a Consent Agreement with the California Environmental Protection Agency's Department of Toxic Substances Control ("DTSC," the state lead regulatory agency) to assure that DTSC concurs with the investigation and remediation proposal that forms the basis of the ESCA. Additional negotiations with the California Regional Water Quality Control Board - San Francisco Bay Region and/or the United States Environmental Protection Agency likely will be required to assure their concurrence with certain aspects of the planned investigations and remediation proposals.

Simultaneously, TIDA is negotiating for the transfer of property based on its submittal of a revised Economic Development Conveyance application in 2004. The Office of Base Reuse and Development is continuing to update the application based on the current redevelopment plans for the island.

TIDA is also engaged in an extensive public process involving establishing a redevelopment plan for reuse of the islands. Working through the Office of Base Reuse and Development, TIDA is negotiating with the prospective master developer, Treasure Island Community Development, LLC (TICD), who was selected through a competitive process on the plans, program and business terms of the redevelopment project. In December of 2006, the TIDA Board and the Board of Supervisors endorsed a comprehensive Development Plan and Term Sheet for Treasure Island, including land use, infrastructure, affordable housing, sustainability, open space, and financing plans. Ultimately, these plans will be memorialized in a Disposition and Development Agreement that is supported by a Redevelopment Plan, General Plan amendments, environmental review consistent with the California Environmental Quality Act, and a Tidelands Trust Exchange with the State Lands Commission, among other legal requirements.

TIDA is also negotiating the plans and business terms for an expanded marina in Clipper Cove with Treasure Island Enterprises which was selected via a competitive RFP process.

TIDA has designated the Office of Base Reuse and Development as the lead negotiator and project management entity facilitating the redevelopment of former Naval Station Treasure Island on behalf of TIDA. The Office of Base Reuse works collaboratively with the Treasure Island Project Office to ensure effective coordination of interim reuse of the islands.

### **FISCAL YEAR 2007-08 BUDGET DISCUSSIONS**

In presenting the FY 2007-08 Budget, a review of this year's revenue and expense is first required. Unplanned expenses and the shortfall of projected revenues for FY 06-07 may result in a deficit at the end of this fiscal year.

#### **Unrealized FY 2006-07 Revenues**

The TIDA approved budget for FY 2006-07 projected housing revenues at \$7,590,000. A revised projection provided by the John Stewart Company in May of 2007 calculates this fiscal year's housing revenues at \$6,345,552. Based on the revision, the decrease in the housing revenues this fiscal year is estimated at approximately \$1.1 million. The cost of transferring 54 TIHDI units and maintaining the units off-line is estimated at \$560,000 in revenue loss. The cost of the Navy's Site 12 environmental remediation efforts is estimated at \$122,732 in revenues loss.

#### **Unplanned FY 2006-07 Expenditures**

Certain unplanned expenditures that have occurred in FY06-07 contribute to the projected deficit. These include \$205,000 to the San Francisco Redevelopment Agency (SFRA) for TIDA staff payroll and vacation payouts because of the transfer from SFRA to General Services Agency (GSA) in August of 2006. TIDA was billed \$31,000 by the PUC for the relocation of the Navy Water Line that had occurred in FY 2005. Finally, approximately \$25,000 was spent for emergency vessel removal in the Clipper Cove this year as well.

## **FY 2007-08 Budget**

Project Staff has separated Operations and Redevelopment so as to not skew the income and expense for the fiscal year. The Operations projected annual revenue is \$9,888,105. Another \$2,520,525 is projected in Developer Reimbursement for redevelopment planning activities.

The total Project Staff Office expense (staff salaries, MOU agreement) is \$1,061,186. TIDA's administrative expenses and contractual obligations including its Community Benefits Fund expenses are \$2,323,000. The Operations contractual obligations include Toolworks, Rubicon, Golden Gate Disposal, TIHDI, YMCA, marine salvage, special events staff, liability insurance for TIDA's Directors and the settlement of the CAM agreement with the Navy.

The remaining surplus funds work-orders related to City Departments for services including DPW, City Attorney, Risk Manager, DTIS and GSA. The budget for the PUC utility services and the rental of the generators remains the same for FY 2007-08. The approval of the FY2007-08 Budget authorizes the expenditures of these work-orders.

Project Staff proposes to make capital improvements to Treasure Island buildings in the amount of \$489,000 utilizing the skilled laborers at the Department of Public Works.

The Director of Island Operations has met with the Mayor's Office of Budget and the General Services Agency to resolve the income to expense gap presented in last month's informational budget presentation. The Director of Island Operations has reviewed revenue enhancements opportunities with the John Stewart Company. Project Staff anticipates improved commercial leasing revenues with the adopting of a new leasing policy. Special Event revenues should experience an increase once the venue management contract is awarded, anticipated in the third quarter of the FY 2007-08. The proposed FY 2007-08 Budget recommends \$3,572,016 for TIDA contributions to the General Fund for police and fire services.

The FY 2007-08 Budget information is outlined in the following categories and exhibits:

Exhibit A-Notable Budget Summary

Exhibit B- TIDA Revenue Spreadsheet

Exhibit C -TIDA Revenue Details

Exhibit D -Expense Spreadsheet Operations

Exhibit E-Expense Details Operations

Exhibit F- Expense Spreadsheet Redevelopment Planning Activities

Exhibit G- Expense Details Redevelopment Activities

Exhibit H-Community Redevelopment Law

Exhibit I- FY 2006-07 TIDA Project Achievements

Exhibit J- FY 2007-08 TIDA Project Goals

## **RECOMMENDATION**

Project Staff recommends adoption of the FY 2007-08 Budget as presented along with authorization to enter into Work-Orders for services with other City Departments for Operations, and authorizing the Director of the Island Operations to submit the proposed budget to the Mayor of the City and County of San Francisco for further review and inclusion in the City's 2007-08 budget. .

Prepared by Frishtah Afifi, Project Administrator  
for Mirian Saez, Director of Island Operations



[Approving the TIDA Annual Budget for FY 2007-2008.]

**Resolution Approving the Budget of the Treasure Island Development Authority for Fiscal Year 2007-2008 and the Fiscal Year 2007-2008 Departmental Work Orders Contained Within, and Authorizing the Director of Island Operations to Submit the Proposed Budget to the Mayor of the City and County of San Francisco for Further Review and Inclusion in the City's 2007-2008 Budget**

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

1 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
2 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
3 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
4 as a redevelopment agency under California redevelopment law with authority over the Base  
5 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the  
6 Base which are subject to the Tidelands Trust, vested in the Authority the authority to  
7 administer the public trust for commerce, navigation and fisheries as to such property; and,

8 WHEREAS, As a Redevelopment Agency the Authority has no indebtedness for the  
9 purpose of claiming property taxes and conforms to California Community Redevelopment  
10 Law regarding the adoption of budgets pursuant to Section 33606; and,

11 WHEREAS, As provided under the Authority's Bylaws, the Director of Island  
12 Operations has prepared a budget for the Authority for Fiscal Year 2007-2008, a copy of  
13 which is attached to this resolution as Exhibit A (the "FY 2007-2008 Budget Submittal"); now  
14 therefore be it

15 RESOLVED, That the Board of Directors of the Authority hereby adopts and approves  
16 the FY 2007-2008 Budget Submittal and the Departmental Work Orders for FY2007-2008  
17 contained in the Budget Submittal, and hereby authorizes the Director of Island Operations to  
18 submit the proposed budget to the Mayor of the City and County of San Francisco for further  
19 review and inclusion in the City's 2007-2008 Budget.

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2  
3 CERTIFICATE OF SECRETARY  
4

5 I hereby certify that I am the duly elected and acting Secretary of the Treasure  
6 Island Development Authority, a California nonprofit public benefit corporation, and  
7 that the above Resolution was duly adopted and approved by the Board of Directors of  
8 the Authority at a properly noticed meeting on May 9, 2007.  
9

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11 \_\_\_\_\_  
12 John Elberling, Secretary  
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**NOTABLE BUDGET SUMMARY:**

- **REVENUES:** Total revenues from housing, special events and commercial leasing activities are projected to be \$9,888,105 in FY 2007-08. TIDA's main revenue source of approximately \$6.5 million is from rental of housing units on Treasure and Yerba Buena Islands, managed under an agreement with the John Stewart Company ("JSCO"). The Common Area Maintenance charges (CAM) paid by the Marina, housing and commercial tenants are also listed in this year's budget.
- **EXPENSES:** The FY 2007-08 Budget projects expenditures at \$9,888,105. Further, \$2,570,525 is budgeted for redevelopment planning costs that may be incurred in FY2007-08 which will be 100% reimbursed by the Master Developer. The expenses for redevelopment planning costs are listed separately this year from the operating activities. In addition, salaries and fringes are listed under General Services Agency (GSA) since Project Staff is housed as employees of GSA, as per our MOU. TIDA will work-order monies to fund 8 positions for Operations including a leasing manager and two positions for redevelopment planning activities. The funding for the SF PUC is maintained at a level consistent with FY 2006-07. The DPW Bureau of Building Repair's budget is increased from \$900,000 to \$1,166,152, to reflect needed building repairs and increase in staffing. In addition, a new expense line item has been added for Special Capital Improvement projects for repairs of the Fog Watch, Hanger 3 roof and the Administration Building refurbishing. Finally, a new category is added for Protective Services which allocates the surplus to the City's General Fund for SFFD and SFPD in the amount of \$3,572,015.
- **REIMBURSEMENTS:** The FY 2007-08 Budget includes an estimated \$2,570,525 in reimbursements by the Master Developer, Treasure Island Community Development (TICD), for TIDA's redevelopment planning costs under the terms of the Exclusive Negotiation Agreement (ENA) between TIDA and TICD. These costs include engineering services, fiscal and economic analysis, planning, and the reimbursement of services provided by the Mayor's Office of Base Reuse, City Attorney's Office and designated TIDA staff.

## **AFFORDABLE HOUSING AND ECONOMIC DEVELOPMENT: MEETING OUR MISSION**

### **• AFFORDABLE HOUSING**

In support of the City's affordable housing objectives and to comply with the Base Closure and Homeless Assistance Act of 1994, TIDA supports the City's affordable housing programs by providing housing to non-profit organizations affiliated with the Treasure Island Homeless Development Initiative (TIHDI) which assists economically disadvantaged and the homeless. In the FY 07-08, TIHDI programs and residents will occupy 250 homes on Treasure Island. This contribution to the City's provision of affordable housing means that TIDA does not generate revenues from these units to support its operations and other City services. A conservative estimate of these forgone revenues is \$3 million annually.

### **• ECONOMIC DEVELOPEMNT**

In support of the City's economic development initiatives, TIDA has contractual agreements in the amount of approximately \$1,000,000 annually with TIHDI member organizations Rubicon and Toolworks. In addition, TIDA also allocates \$225,000 annually to TIHDI for administration of its programs, of which \$100,000 is redistributed to the Boy and Girls Club on the Island for recreational support programs for Island residents

## **OTHER CONSIDERATIONS:**

- The use of non-tax revenues to pay for City services on Treasure Island is limited to the legal factor of the Tidelands Trust. Treasure Island proper and a small portion of Yerba Buena Island are subject to the Tidelands Trust, which is governed by the State Lands Commission. The Tidelands Trust requires that revenues generated from Trust lands be used for Trust purposes. As a result, revenues generated on Trust lands (i) must be carefully tracked, (ii) should not be used to pay for City services provided to non-Trust properties such as the greater part of Yerba Buena Island (including property owned by the Coast Guard), the Job Corps, and the Bay Bridge, and (iii) must be limited to reasonable costs that directly benefit the Trust. On the other hand, the Base's geographic remoteness and corresponding need for dedicated personnel may make such services sufficiently unique to justify using Trust revenues to pay for them.
- TIDA's subleasees contribute to the City over \$300,000 annually in property Possessory Interest Tax for Treasure and Yerba Buena Islands





May 9, 2007

TIDA 2007-08 REVENUE SOURCE	2006-07 TIDA Approved Budget	2007-08 Proposed Budget Reclassified as non-revenue
Developer Reimbursements	3,711,000.00	
TI Special Events Revenues	550,000	550,000
TI Commercial Revenues	340,000	519,430
TI Film Revenues	30,000	30,000
YBI Filmming/Celistsites/ Banner Revenues	40,000	121,428.00
Marina Revenues	219,000	181,715
TI Housing Revenues	Includes JSCO CAM 6,670,000	4,880,519
YBI Housing Revenues	920,000	794,503
JSCO & Commercial Tenants CAM Revenues	Commercial Tenants CAM not included in the 06-07 Budget	472,009
JSCO Base Rent	Included in the TI Housing Line Item Above	538,500
SFFD Training Academy	1,800,000	1,800,000
Grand Totals	\$14,280,000	\$9,888,104







**I. TIDA REVENUE DETAILS****A. TI Special Events Revenues**

This amount reflects revenues received from special events held on Treasure Island such as corporate events, wedding receptions, and chapel use, etc. The revenues are anticipated to increase once the venue management contract is awarded which is anticipated in the third quarter of the fiscal year. The increase in promotional budget for Special Events should also result in more revenues in the FY 07-08.

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$550,000</b>	<b>\$550,000</b>	<b>No Change</b>

B. TI Commercial Revenues

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$340,000</b>	<b>\$519,430</b>	<b>\$179,430</b>

This amount reflects executed leases for space on Treasure Island and an estimated amount of additional revenues from new leasing activity during FY 2007-08.

<b>Tenant</b>	<b>Monthly Rent</b>	<b>Annualized</b>
California Logistics	\$13,061	\$156,732
Glide Foundation	\$2,000	\$24,000
Goodwill	\$2,266	\$27,192
Island Creative Management	\$20,964	\$251,566
SF GG Youth Rugby	\$1,030	\$12,360
SF Kanko Photo Booth	\$515	\$6,180
SF Vending	\$250	\$3,000
Walter Wong Construction	\$2,000	\$24,000
<b>Total Current Tenants</b>	<b>\$42,086</b>	<b>\$505,030</b>

**Estimated FY 07-08 Potential New Leasing**

Building 146-Gate House-Bay Area Air Quality Management District	\$300	\$3600
Building 69 – Shed, Occidental Power	\$600	\$7200
Great Lawn-Lawrence Berkeley Laboratory	\$300	\$3600
<b>Total FY 07-08 Potential New Leasing</b>	<b>\$1,200</b>	<b>\$14,400</b>
<b>Total Current &amp; Potential New Leasing</b>	<b>\$43,400</b>	<b>\$519,430</b>

C. TI Film Permits

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$25,000	\$25,000	No change

This amount reflects revenues received from film permits issued on Treasure Island.

D. YBI Cell Sites & Banner Revenues

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$40,000	\$121,430	\$81,430

This amount reflects revenues that will be received from Cell Sites (\$31, 428) and YBI Tunnel banner permits (\$90,000) issued on Yerba Buena Island. The increase is based on actual received over the past two fiscal years and commitments for next year.

E. TI Marina

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$219,000	\$121,715	(\$37,285)

This amount reflects executed agreements for use at Treasure Island Marina including:

<u>Tenant</u>	<u>Monthly Rent</u>	<u>Annualized</u>
Treasure Island Enterprises	\$7,775	\$93,300
TI Yacht Club	\$620	\$7,440
Bertone	\$1,060	\$12,730
Salt River Constructions	\$5,000	\$60,000
Historic Tugboat	\$687	\$8,245
<b>Grand Totals</b>	<b>\$15,140</b>	<b>\$181,715</b>

The decrease is due to the discontinuation of the lease agreement between TIDA and Westar for the rental of the barges.

**F. TI Housing Revenues**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$6,670,000</b>	<b>\$5,419,20</b>	<b>(\$1,250,980)</b>

Based upon a 578 unit portfolio for FY 07-08, the total projected housing revenue from the John Stewart Company is \$6,553,122. The revenue for the 498 units, or approximately 86% of the housing located on Treasure Island, is projected to be \$5,419,020. Further, of the 498 units on Treasure Island, only 489 units are income producing because the Navy has not transferred them over to JSCO due to remediation testing. The Navy's current environmental remediation work at Site 12 will also result in approximately \$123,000 decrease in revenues in the FY 2007-08. Additionally, the transition of 54 units from the John Stewart Company portfolio to TIHDI effective July 1, 2007 will also result in decreased revenues.

Finally pursuant to approval by the Authority Board and the Board of Supervisors, utility rates for the housing units are scheduled to increase by approximately \$20 per month per residential unit. This change is intended to enable PUC to recover more of its costs of providing utility service which have increased over the past two years due to the increased cost of energy commodities. Because John Stewart Company pays PUC a flat rate per unit for utility services (units are not individually metered), the result is reduced revenues to TIDA.

**G. YBI Housing Revenues**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$920,000</b>	<b>\$794,503</b>	<b>(\$125,497)</b>

Based upon a 578 unit portfolio, the total projected housing revenue from the John Stewart Company is \$6,553,122. The revenue for the 80 units, or approximately 14% of the housing located on Yerba Buena Island, is projected to be \$794,503. In addition, the utility rate increase discussed above will result in decrease of revenues for Yerba Buena Island.

**H. Common Area Maintenance (CAM) Revenues**

**TIDA FY 06-07 Budget****Proposed FY2007-08****Change****\$0****\$472,010****\$472,010**

CAM charges paid to TIDA monthly by the commercial, marina and housing tenants are now reflected as revenue. The amounts of CAM revenues are assessed on the following tenants.

<b>Commercial Tenant</b>	<b>Monthly CAM</b>	<b>Annual CAM</b>
Kidango	\$630	\$7,560
TIHDI-Administration Building	\$800	\$9,600
TIHDI-Service Space	\$105	\$1,260
TIHDI-Shape Shape Building	\$144	\$1,728
<b>Total Commercial CAM Charges</b>	<b>\$1,679</b>	<b>\$20,148</b>

<b>Marina Tenants</b>	<b>Monthly CAM</b>	<b>Annual CAM</b>
TI Marina	\$275	\$3,300
TI Sailing Center	\$100	\$1,200
TI Yacht Club	\$35	\$405
<b>Total Maria CAM Charges</b>	<b>\$410</b>	<b>\$4,905</b>

<b>Housing Tenant</b>	<b>Monthly CAM</b>	<b>Annual CAM</b>
Catholic Charities	\$2,876	\$34,519
CHP (Island Bay Homes)	\$1,094	\$13,134
Haight Ashbury Free Clinics	\$823	\$9,882
Rubicon Programs	\$2,055	\$24,660
Swords to Plow Share	\$1,146	\$13,760
Walden House	\$950	\$11,401
John Stewart Company	\$28,300	\$339,600
<b>Total Housing CAM Charges</b>	<b>\$37,244</b>	<b>\$446,956</b>

<b>Grand Total CAM Charges</b>	<b>\$39,330</b>	<b>\$472,010</b>
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Expenses	TIDA Board Approved 06-07	07-08 Proposed Budget
<b>05/09/07-TIDA OPERATIONS EXPENSES</b>		
<b>ADMINISTRATION</b>	<b>\$359,000 REDEVELOPEMENT COSTS REMOVED</b>	
MISC REGULAR (Salaries)	\$722,397	Now Under GSA's Budget
RETIRE CITY MISC FRINGE BENEFITS	\$147,433	Now Under GSA's Budget
TRAVEL COSTS PAID TO EMPLOYEES	\$5,000	\$5,000
TRAINING COSTS PAID TO EMPLOYEES	\$8,000	\$8,000
LOCAL FIELD EXP	\$500	\$500
MEMBERSHIP FEES	\$1,200	\$5,000
PROMOTIONAL AND MARKETING EXPENSE	\$1,000	\$15,000
DELIVERY & POSTAGE (OTHER CURRENT EXPENSES )	\$7,500	\$7,500
OFFICE RENTALS & LEASED EQUIPMENT	\$15,000	\$15,000
OFFICE MATERIALS & SUPPLIES	\$10,000	\$46,000
<b>TOTAL ADMINISTRATION</b>	<b>\$918,030</b>	<b>\$102,000</b>
<b>PROFESSIONAL &amp; SPECIALIZED SERVICES</b>		
REDEVELOPMENT PLANNING ACTIVITIES	<b>\$1,550,000 REDEVELOPMENT COSTS REMOVED</b>	Now Under Redevelopment Planning Activities
TIHDI Operating Contract	\$225,000	\$225,000
TI Gym Operation	\$215,000	\$215,000
Marine Salvage	\$0	\$25,000
Special Events Staff	NOT SPECIFICALLY DETAILED IN THE PREVIOUS YRS	\$60,000
COMMUNITY BENEFIT FUND	\$1,000,000	\$465,000
SCAVENGER SERVICES (Golden Gate Disposals)	\$25,000	\$25,000
JANITORIAL SERVICES (Toolworks)	\$130,000	\$150,000
GROUNDS MAINTENANCE ( Rubicon Landscaping)	\$725,000	\$800,000
TIDA DIRECTOR'S LIABILITY INSURANCE	\$50,000	\$45,000
COMMON AREA MAINTENANCE CHARGES TO OTHER GOVERNMENT AGENCY (NAVY)	\$211,000	\$211,000
<b>TOTAL PROFESSIONAL &amp; SPECIALIZED SERVICES</b>	<b>\$2,581,000</b>	<b>\$2,221,000</b>
<b>CITY DEPARTMENT WORK-ORDERS</b>	<b>\$1,204,504 REDEVELOPMENT COSTS REMOVED</b>	
DTIS SERVICES (AAO)	\$11,924	\$16,000
DT SERVICES (AAO)	\$32,216	
RISK MANAGEMENT INSURANCE CONSULTING	\$5,000	\$6,250
GENERAL SERVICES AGENCY	\$110,000	\$1,061,185
GF-CITY ATTORNEY-LEGAL SERVICES (AAO)	\$200,000	\$200,000
GF-FIRE (AAO)	\$4,277,325	NOW Under PROTECTIVE SERVICES
GF-HR-MGMT TRAINING (AAO)	\$1,500	\$3,000
IS-PURCH-CENTRAL SHOPS-AUTO MAINT (AAO)	\$3,000	\$3,000
IS-PURCH-CENTRAL SHOPS-FUEL STOCK (AAO)	\$2,000	\$3,500
IS-PURCH-REPRODUCTION (AAO)	\$5,224	\$25,000
GF-POLICE SECURITY (AAO)	\$765,000	NOW Under PROTECTIVE SERVICES
GF-PUC-HETCH HETCHY (AAO)	\$1,000,000	\$1,000,000
SR-DPW-BUILDING REPAIR (AAO)	\$900,000	\$1,166,150
SR-DPW-ENGINEERING (AAO)	\$65,000	\$0
SR-DPW-CONSTRUCTION MGMT (AAO)	\$35,000	\$20,000
SPECIAL CAPITAL IMPROVEMENT PROJECTS	\$0	\$489,000
<b>TOTAL CITY DEPARTMENT WORK-ORDERS</b>	<b>\$7,413,189</b>	<b>\$3,993,085</b>
<b>SUBTOTAL OPERATIONS EXPENDITURES</b>	<b>\$10,912,219</b>	<b>\$6,316,085</b>
<b>SURPLUS AVAILABLE FOR DISTRIBUTION TO GENERAL FUND</b>		
PROTECTIVE SERVICES SFFD & SFPD	0	\$3,572,016.00
<b>TOTAL OPERATIONS EXPENDITURES</b>		<b>\$9,888,101</b>

Ex.D







## II. EXPENSE DETAILS OPERATIONS ACTIVITIES

The expenditure for daily operations for Treasure and Yerba Buena islands fall under the following four categories: Administration, Professional Specialized Services, City Department Work-Orders and PUC.

### A. ADMINISTRATION

#### 1. Travel Costs for Training and Conferences

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$5,000	\$5,000	No Change

Same level of funding as in the Fiscal Year 06-07.

#### 2. Training Costs

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$8,000	\$8,000	No change

Same level of funding as in the Fiscal Year 06-07.

#### 3. Local Field Expenses

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$500	\$500	No change

Same level of funding for FY2006-07 for expenses, such as parking reimbursement.

#### 4. Membership Fees

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$1,200	\$5,000	\$3,800

Increases the level of funding by \$3,800 for staff professional memberships to organizations such as San Francisco Planning & Urban Research (SPUR), the National Association of Installation Developers (NAID) and City Manager's Association.

5. **Promotional & Marketing**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$1,000</b>	<b>\$15,000</b>	<b>\$14,000</b>

Increases the level of funding by \$14,000 to promote and market Special Events venues and advertise commercial opportunities and purchase promotional material.

6. **Delivery & Postage (Other Current Expenses)**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$7,500</b>	<b>\$7,500</b>	<b>No Change</b>

Provides the same level of funding as FY 06-07 for postage, messenger, and printing costs.

7. **Office Rental and Leased - Equipment**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$15,000</b>	<b>\$15,000</b>	<b>No Change</b>

The proposed FY 07-08 provides the same level of funding as in last fiscal year for office machine rentals including a copier and postage machine.

8. **Office Materials & Supplies**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$10,000</b>	<b>\$16,000</b>	<b>\$6,000</b>

The proposed FY 07-08 budget provides a \$6,000 increase in funding for office materials and supplies. \$6,000 is budgeted for purchase of new office equipment including an additional fax and a photocopy machine.

## EXPENSES DETAILS OPERATIONS CONTINUED

### B. PROFESSIONAL SPECIALIZED SERVICES

#### 1. Treasure Island Homeless Development Initiative (TIHDI)

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$225,000	\$225,000	No Change

Under this contract, TIHDI provides several services to TIDA including coordinating and facilitating participation of community-based homeless service organizations in this interim phase as well as future redevelopment planning. TIHDI also provides input in community services and development components and coordinates recreational activities on Treasure Island through various programs. The proposed budget provides the same level of funding as last fiscal year. \$100,000 of this amount is distributed to the Boys and Girls Club to provide recreational programming for the Island community.

#### 2. YMCA Gym Operation

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$215,000	\$215,000	No Change

Under this contract, YMCA is funded to operate the Treasure Island gym and create recreational programs for the Island residents. The proposed budget provides the same level of funding as last fiscal year.

#### 3. Marine Salvage Services

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$0	\$25,000	\$25,000

\$25,000 is the anticipated contract to hire a marine salvage operator for the removal of sunken vessels from the Clipper Cove.

#### 4. Special Events Support Staff

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$0 (Under Contract but not detailed)	\$60,000	\$60,000

The Special Events contract staff provides various services to support Special Events on weekends including opening and closing venues, monitoring events and delivers liaison

services between the Special Events Coordinator and the clients. Three contracts at \$20,000 are anticipated for the next fiscal year. The contracts were not reflected in last year's budget.

5. **Community Benefit Fund**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$1,000,000</b>	<b>\$465,000</b>	<b>(\$535,000)</b>

The TIDA Board directed staff in Resolution #05-041-11/09, passed on November 9, 2005, to engage in a community process to establish priorities for allocating funds from reimbursable redevelopment planning expenses that were incurred during FY 05-06. In FY 06-07, TIDA was reimbursed \$1,055,244 from the selected master developer for redevelopment related expenses. The specific projects were selected as a result of community outreach surveys and meetings. The Authority Board, on April 11, 2007, approved these Community Benefit Fund expenditures:

**FY 06-07**

a. Kidango for Affordable Childcare	\$25,000
b. The Boys and Girls Club	\$80,000
c. TIHDI Self Sufficiency Program	\$50,000

<b>FY06-07 Total</b>	<b>\$155,000</b>
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**FY07-08**

a. The Playground	\$289,000
b. Skate Board Park	\$61,000
c. Emergency Planning	\$105,000
d. Community Outreach Public Events	\$10,000

<b>FY 07-08 Total</b>	<b>\$465,000</b>
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<b>Total for FY 06-07 and FY 07-08</b>	<b>\$620,000</b>
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6. **Scavenger Services**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$25,000</b>	<b>\$25,000</b>	<b>No Change</b>

Golden Gate Disposal provides scavenger services to Treasure and Yerba Buena Islands. The proposed budget provides the same level of funding as last fiscal year. The TIDA Board approved an extension of Norcal's service contract on April 11, 2007 on a month to month basis.

7. **Janitorial Services**

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$130,000	\$150,000	\$20,000

Toolworks provides janitorial maintenance services for various buildings on Treasure Island and is a member organization of TIHDI that employs formerly homeless and economically disadvantaged individuals. The proposed FY 07-08 budget provides an increase of \$20,000 in funding from the last fiscal year for additional janitorial services needed due to increased leasing activities and SFPD office.

8. **Rubicon Landscaping Grounds Maintenance**

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$725,000	\$800,000	\$75,000

Rubicon Enterprises provides all landscaping maintenance services on Treasure and Yerba Buena Islands. The proposed FY 2007-08 budget increases the landscaping line item by \$75,000 to include some needed preventative ground maintenance services such as tree trimming, landscaping for the Casa de la Vista and the Great Lawn irrigation project. Rubicon is a member organization of TIHDI and employs formerly homeless that economically disadvantaged individuals.

9. **Insurance Budget**

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$50,000	\$45,000	(\$5,000)

Liability insurance for TIDA's Board of Directors was reduced to \$35,000 in FY 06-07. \$10,000 is for insuring the Miguel Covarrubias Murals. The proposed \$45,000 for FY 07-08 budget is a decrease of \$5,000 in funding from the last fiscal year.

10. **Navy Common Area Maintenance (CAM) Charges Payments to Other Govt. Agencies**

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$211,000	\$211,000	No Change

TIDA owed the U.S. Navy \$872,000 associated with unpaid common area maintenance (CAM) charges pursuant to the Cooperative Agreement. The Navy has agreed to allow TIDA to repay these charges over time per an agreement approved by the TIDA Board. In FY 2005-06, \$450,000 was paid to the Navy with the remaining \$422,000 to be paid in two equal installments in FY2006-07 and FY2007-08. Therefore, \$211,000 is budgeted for FY2007-08 to satisfy the terms of the agreement.

C. **EXPENSES – WORK-ORDER SERVICES OF OTHER DEPARTMENTS**

1. **DTIS– Telephone**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$13,750</b>	<b>\$16,000</b>	<b>\$2,250</b>

This \$16,000 provides funds for telephone services as requested by the Department of Telecommunications and Information Systems/GSA. The increase of \$2,250 is to upgrade the Project Office's voice-mail system capabilities in the FY 2007-08.

2. **Risk Management Insurance Consulting**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$5,000</b>	<b>\$6,250</b>	<b>\$1,250</b>

This \$6,250 provides funding for the City's Risk Manager who reviews the subleases and use-permits for insurance requirements. The increase of \$1,250 is requested by the Risk Manager.

3. **General Services Agency**

A. **Accounting/Budget Preparation/Financial Oversight/IT Services**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$110,000</b>	<b>\$115,000</b>	<b>\$5,000</b>

General Services Agency provides services to TIDA in support of human resources, budget, accounting, financial reporting, payroll, certain information and technology support and more. The management and financial oversight are part of the MOU agreement.

All network/server/Lotus/workstation/software maintenance and support that was previously provided by DTIS is now handled by General Services Agency. The increase in the proposed 07-08 Budget is due to the necessity of the need to replace the server and purchase property management software in the next fiscal year. The proposed 2007-08 Budget increases the funding for this line item by \$5,000.

B. **SALARIES & FRINGES**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$869,830</b>	<b>\$950,505</b>	<b>80,675</b>

Staffing will be increased by one position in Operations in FY 07-08 for a leasing property manager. Another position will be reclassified from 1820 Junior Administrative Analyst to Senior Administrative Analyst. All positions are employees of General Services Agency (GSA) and will be reflected in the GSA's budget presented to the Board of Supervisors. The decrease in salaries and fringes is due to TIDA's completion of severance payment to the former Executive Director in May of 2007. The total Operations Salaries & Fringes is \$950,505 for the following positions.

<u><b>Class#</b></u>	<u><b>Classification Title</b></u>	<u><b>TIDA Job Title</b></u>	<u><b>Annual Salary</b></u>	<u><b>Fringe Benefits</b></u>	<u><b>Total</b></u>
0953	Deputy Director III Senior Real Property	Director of Island Operations	\$149,646	\$30,473	\$180,119
4142	Officer Senior Real Property	Leasing Manager	\$81,518	\$18,925	\$100,443
4142	Officer Senior Administrative	Facilities Manager	\$108,691	\$25,232	\$133,923
1823	Analyst Senior Administrative	Press Information Officer	\$90,994	\$23,373	\$114,367
1823	Analyst Senior Administrative	Asst Facilities Manager	\$90,994	\$23,373	\$114,367
1823	Analyst Senior Administrative	Special Events Coordinator	\$90,994	\$23,373	\$114,367
1823	Analyst Junior Administrative	Commission and CAB Secretary	\$90,994	\$23,373	\$114,367
1820	Analyst	Receptionist/Admin Support	<u>\$56,111</u>	\$22,440	\$78,551
<b>Total Proposed TIDA Salaries</b>			<b>\$759,942</b>	<b>\$190,562</b>	<b>\$ 950,505</b>

4. City Attorney

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$200,000	\$200,000	No change

This amount reflects \$200,000 for the City Attorney's Office to provide legal services for TIDA's role as caretaker and property manager of the islands and for other administrative responsibilities. The proposed FY 07-08 provides the same level of funding as last year.

5. Human Resources – Management Training

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$1,500	\$3,000	\$1,500

Provides an increase of \$1,500 for staff Human Resources and management training.

6. Purchasing -Central Shops–Auto Maintenance

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$3,000	\$3,000	No change

7. Purchasing -Central Shops–Fuel

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$2,000	\$3,500	\$1,500

Provides an increase of \$1,500 for fuel and vehicle maintenance services provided by Central Shops.

8. Purchasing –Reproduction

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$5,224	\$25,000	\$19,776

Provides an increase of \$19,776 to cover the cost for TIDA's website project, production of marketing material for Special Events venues and photocopying support for TIDA board packages.

9. Public Utilities Commission

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$1,000,000	\$1,000,000	No Change

The same level of funding is requested in the FY2007-08. This amount reflects an annual utility services of \$700,000 and \$300,000 for the annual rental of a backup electrical generator located at Treasure Island.

10. **Public Works (DPW)**

A. **DPW Bureau of Building Repair (BBR)**

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$900,000	\$1,166,152	\$266,152

The proposed 2007-08 Budget increases the level of funding for the DPW Bureau of Building Repair by \$266,152 due to the needed building repairs based on this year's actuals maintenance. It also provides for an increase in DPW staffing by .5 full-time employee and changes the supervisor to full-time on the Island.

B. **DPW Engineering**

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$65,000	\$0	(\$65,000)

The proposed 2007-08 Budget allocates zero funding for DPW Engineering.

C. **DPW Construction Management**

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$35,000	\$20,000	(\$15,000)

The proposed 2007-08 Budget allocates \$20,000 in funds for DPW Construction Management.

11. **Special Capital Improvement Projects**

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$0	\$489,000	\$489,000

A. **Fog Watch Building Repair**

The proposed 2007-08 Budget plans funding for the repair and renovation of the Fog Watch Building for use of Special Events. \$317,085 is budgeted for repairs to the roof, interior and exterior painting, carpentry work, replacement of the carpet as well as electrical upgrades.

B. Hanger 3 Roof Repair

The proposed 2007-08 Budget allocates \$130,000 for roof repair work for Hanger 3.

C. Administration Building One Refurbishing

The proposed 2007-08 Budget allocates \$42,000 to paint certain interior areas of the Administration Building, replace the mezzanine level carpet, and general refurbishing of the facility.

12. Protective Services

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$5,042,325	\$3,572,016	(\$1,470,309)

This is a new line item presented in the FY 07-08 budget. Traditionally the departments included under this category are the Police and Fire Departments. The proposed 2007-08 Budget allocates \$3,572,016 in contributions to the General Fund for protective services of Treasure and Yerba Buena Islands





Ex.F

<b>Expenses</b>	<b>06-07 TIDA Approved</b>	<b>07-08 Proposed</b>
<b>TIDA REDEVELOPMENT PLANNING FY 07-08 BUDGET</b>		
<b>PROFESSIONAL &amp; SPECIALIZED SERVICES</b>		
Economic & Fiscal Analysis (RFP)	\$150,000	\$150,000
Urban Design Planning FY 07-08 (SFRA/Other)	\$25,000	\$75,000
Transportation Planning (Transportation Authority)	\$50,000	\$75,000
Sustainability Planning	\$50,000	see Dept of Env below
Financial Advisor/Bond Counsel (MOPF)	\$50,000	\$50,000
Appraisal/Other Consultants (TBD)	\$50,000	\$50,000
Ferry Terminal Planning Grant Match (TBD)	\$281,000	\$281,000
Cost Estimating (TBD)	\$50,000	\$50,000
Environmental Engineering (Geomatrix)	\$200,000	\$180,000
Environmental Engineering (CH2M Hill)	\$100,000	\$0
Redevelopment Planning (Siefel Consulting)	\$75,000	\$75,000
Ramp Project Study Report	\$350,000	
Misc.	\$59,000	
YBI Natural Areas Management Plan (TBD)	\$0	\$75,000
<b>Subtotals</b>	<b>\$1,490,000</b>	<b>\$1,061,000</b>
<b>CITY DEPARTMENT WORK-ORDERS</b>		
General Service Agency (Salaries & Fringe)	\$159,504	\$299,525
City Attorney's Office	\$700,000	\$550,000
PUC	\$100,000	\$100,000
Department of Environment	\$10,000	\$50,000
Planning Dept	\$35,000	\$235,000
Municipal Transportation Authority	\$0	\$40,000
Office of Base Reuse	\$200,000	\$235,000
<b>Subtotals</b>	<b>\$1,204,504</b>	<b>\$1,509,525</b>
<b>TOTAL REDEVELOPMENT EXPENDITURES</b>	<b>\$2,694,504</b>	<b>\$2,570,525</b>







**EXPENSES DETAILS REDEVELOPMENT PLANNING ACTIVITIES**

The redevelopment planning expenditure activities for the transfer of the former military base Treasure Island fall under two following categories:

- A. Professional and Specialized Services
- B. City Department Work-Orders.

**A. PROFESSIONAL AND SPECIALIZED SERVICES**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$1,490,000</b>	<b>1,061,000</b>	<b>(\$429,000)</b>

The following is an estimate of the consulting services projected for FY 2007-08 to support redevelopment planning activities that enable reuse of the former military facility. These costs will be 100% reimbursed by the prospective master developer per the terms of the ENA between TIDA and TICD, and consist of the following components:

1.	Economic and Fiscal Analysis (RFP)	\$150,000
2.	Urban Design/Planning (to be determined)	\$75,000
3.	Transportation Planning (Transportation Authority)	\$75,000
4.	Financial Advisor/Bond Counsel (MOPF)	\$50,000
5.	Appraisals/Other consultants - (to be determined)	\$50,000
6.	Ferry Terminal Planning Grant Match (to be determined)	\$281,000
7.	Cost Estimating (to be determined)	\$50,000
8.	Environmental Engineering (Geomatrix)	\$180,000
9.	Redevelopment Planning – (Siefel Consulting)	\$75,000
10.	YBI Natural Areas Management Plan (to be determined)	\$75,000
<b>Total Projected FY2007-08 costs to be incurred</b>		<b>\$1,061,000</b>

**B. City Department Work-Orders**

**1. General Services Agency Staff**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$159,504</b>	<b>\$299,525</b>	<b>\$140,021</b>
0933 Manager V	(\$139,519 Salary + \$29,698 Fringe = \$169,217)	
1824 Assistant Project Manager	(\$105,351 Salary + \$24,957 Fringe = \$130,308)	

Upon endorsement of the Development Plan and Term Sheet for the Redevelopment of Naval Station Treasure Island (Development Plan) by the Authority Board and the Board of Supervisors, the Authority will move into the next phase of redevelopment planning. This phase includes an increased level of redevelopment planning work including negotiation of a Disposition and Development Agreement with the prospective master developer, project-specific environmental review under CEQA, formulation of a Redevelopment Plan, negotiation of transfer of property and environmental remediation responsibilities with the US Navy, negotiation of a Tidelands Trust Exchange Agreement and many other elements discussed previously with the Authority Board. Consequently, staff has determined that an Assistant Project Manager is necessary to support these activities and an additional staff position has been added. Funding for both positions will be reimbursed by the master developer.

**2. Office of Economic and Workforce Development**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$200,000</b>	<b>\$235,000</b>	<b>\$35,000</b>

TIDA has designated staff from the Office of Base Reuse and Development (a division of the Office of Economic and Workforce Development) as the lead negotiator on behalf of TIDA in negotiations with the US Navy and prospective master developer. The \$235,000 funds services provided by staff in the Office of Base Reuse and Development representing TIDA. This \$235,000 will be 100% reimbursed by the prospective master developer.

**3. City Attorney's Office**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
<b>\$700,000</b>	<b>\$550,000</b>	<b>(\$150,000)</b>

\$550,000 is budgeted for the City Attorney Office's work assisting and representing TIDA in its redevelopment planning and negotiation with the prospective master developer and US Navy for transfer and cleanup of the former base. The \$550,000 for redevelopment planning activities in the FY 2007-08 will be 100% reimbursed by the prospective master developer.

4. **Department of the Environment**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
\$10,000	\$50,000	\$40,000

The Department of the Environment has been involved in the redevelopment planning process by assisting with sustainability planning activities. TIDA anticipates that the Department's role in the next fiscal year will include additional support and is budgeting \$50,000 for these services. This \$50,000 will be 100% reimbursed by the prospective master developer.

5. **Planning Department**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
\$35,000	\$235,000	\$200,000

The redevelopment planning process will include environmental review under CEQA. The Planning Department's Major Environmental Analysis division manages the CEQA review process and charges for its time based on a fee schedule based on project size. This \$235,000 will be 100% reimbursed by the prospective master developer.

6. **Public Utilities Commission**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
\$100,000	\$100,000	No Change

In the next fiscal year, \$100,000 is budgeted for the PUC's role in assisting TIDA in the redevelopment planning which will be 100 % reimbursed by the developer under the terms of the ENA.

6. **Municipal Transportation Authority**

<b>TIDA FY 06-07 Budget</b>	<b>Proposed FY2007-08</b>	<b>Change</b>
\$0	\$40,000	\$40,000

Subject to an MOU between TIDA and the MTA, the MTA provides administrative support for implementation of the ferry terminal planning grants from the Federal Transit Administration. In the next fiscal year, \$40,000 is budgeted for MTA's role administering the grant funds consistent with the MOU.





**MEETING CALIFORNIA COMMUNITY REDEVELOPMENT LAW  
REQUIREMENTS:**

Pursuant to Section 33606 of the California Community Redevelopment Law (CRL) an agency shall adopt an annual budget containing all of the following specific information, including all activities to be financed by the Low and Moderate Income Housing Fund established pursuant to Section 33334.3:

- (a) The proposed expenditures of the agency.
- (b) The proposed indebtedness to be incurred by the agency.
- (c) The anticipated revenues of the agency.
- (d) The work program for the coming year, including goals.
- (e) An examination of the previous year's achievements and a comparison of the achievements with goals of the previous year's work program.

Since TIDA is a redevelopment agency under the CRL, it needs to comply with the requirements of the CRL. TIDA has not yet adopted a redevelopment plan and is not receiving any tax increment, so it has nothing to report regarding activities financed by the Low and Moderate Income Housing Fund. TIDA does not propose to incur any indebtedness in FY2007-08.







Ex. I

TREASURE ISLAND DEVELOPMENT AUTHORITY  
PROJECT ACHIEVEMENTS  
PROJECT: TREASURE ISLAND REDEVELOPMENT PROJECT  
July 1, 2006 - June 30, 2007

**FISCAL YEAR 2006-2007 REDEVELOPMENT ACHIEVEMENTS**

1. Endorsement of the Development Plan and Term Sheet for the Redevelopment of Naval Station Treasure Island by the Treasure Island/Yerba Buena Island Citizen's Advisory Board, Authority and the Board of Supervisors.
2. Worked with Caltrans to successfully award a contract for construction of double submarine cables connecting Treasure Island to Oakland.
3. Community outreach efforts continued including staffing the TI/YBI CAB and participating with the Treasure Island Restoration Advisory Board (facilitated by the Navy with a specific interest in the cleanup efforts), and holding public workshops and making presentations to the Board of Supervisors Land Use and Economic Development Committee.
4. Representatives from the Office of Base Reuse and Development, Treasure Island Project Office, and the Office of the City Attorney continued the important independent monitoring of the Navy's environmental remediation efforts.
5. Working through the San Francisco County Transportation Authority and Caltrans, completed preparation of a Project Study Report for new ramps connecting Yerba Buena Island to the new Eastern Span of the Bay Bridge.\*
6. Initiated the process of project specific environmental review under CEQA for the proposed Development Plan.

**TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**PROJECT ACHIEVEMENTS**  
**TREASURE ISLAND OPERATIONS**  
July 1, 2006 – June 30, 2007

**FISCAL YEAR 2006-2007 OPERATIONS ACHIEVEMENTS**

1. Embarcadero YMCA selected as Treasure Island Gym Operator.
2. Adoption of an Attendance Policy for the Members of the Treasure Island Development Authority Board of Directors.
3. 5 new Subleases approved:
  - Sublease of Building 180 to California Logistics
  - Sublease of Building 180 to Beyond Productions
  - Sublease to Bay Area Air Quality Management District
  - Sublease of Building 1 Office Space to Wine Valley Catering
  - Sublease of Building 216 to Tri-California
4. Miguel Covarrubias murals "Pageant of the Pacific" exhibited in Mexico City and Puebla, Mexico.
5. Removal of two derelict vessels from Clipper Cove per Caretaker Agreement with the Navy.
6. Adoption of a Special Events Rental Policy and revision of Special Events Venue rates.
7. Condition Assessment of commercial properties and rental rates performed.
8. Listing of commercial properties on Costar property listing service.
9. Adoption of a Policy for rental of YBI Banner Space.
10. Identification and approval of projects for expenditures from Community Benefit Fund.
11. Adoption of MOU with the Office of the City Administrator for the staffing of the TI project office.
12. Adopting implementation plan of Controller's Audit recommendations.
13. Establishment of Building One Art Gallery and 3 different exhibits hung in gallery.
14. First public E-Waste Collection Day for Island community.

15. Disposal of majority of outdated computers and computer equipment from Navy surplus warehouse.

16. "Chicken Hooray" hot food to Island every Thursday evening.

17. Establishment of Farmers Market.

18. Creation of monthly events calendar for residents and Island community.

19. The Island hosted the following major Special Events:

- Game Live Events-July 2006
- Pfizer-July 2006
- Miki Corporation (Japan)-August 2006
- California Dragon Boat Association's International Dragon Boat Festival-September 2006
- AMGEN-September 2006
- KPMG-October 2006
- San Francisco Maritime National Parks Association-October 2006
- Treasure Island International Triathlon-November 2006
- Make A Wish Foundation-February 2007
- Fox Sports Net-February 2007







TIDA FISCAL YEAR 2007-2008 REDEVELOPMENT GOALS

1. Negotiate term sheet agreement with US Navy for conveyance of former Naval Station Treasure Island to the Authority.
2. Initiate the process of creating a Redevelopment Plan.
3. Work with the San Francisco Planning Department to prepare and publicly distribute the Draft EIR.
4. Initiate process of amending the San Francisco General Plan, Planning Code and Zoning Map consistent with redevelopment project.
5. Continue to develop the redevelopment plans for Treasure Island in furtherance of a final Disposition and Development Agreement, through the extensive public planning process.
6. Successfully obtain legislation (i) authorizing transferring ownership to Caltrans of ramps connecting Yerba Buena Island to the new eastern span of the San Francisco-Oakland Bay Bridge, (ii) authorizing an exchange of Tidelands Trust properties consistent with the land use plan in the Development Plan, and (iii) creating a Treasure Island Transportation Management Agency and authorizing the implementation of a transportation management program that includes congestion pricing, and parking fees and a transit pass program, all subject to approval of the Board of Supervisors.
7. Work with the San Francisco Public Utilities Commission to evaluate the feasibility of public power operation at Treasure Island.

**TREASURE ISLAND PROJECT OFFICE**  
**FY 2007-2008 OPERATIONS GOALS**

1. Establishment of both Island-wide EOP, including identification of proper roles of on-Island entities and community organizations post-disaster, and the TIDA departmental emergency response plan.
2. Completion and activation of redesigned TIDA website. Improve the website, for greater ease of navigation and clarity of information, and add a page for commercial leasing.
3. Establishment by City of legislation allowing for enforcement of Clipper Cove, including creation of set of rules and regulations for boaters and marine activity in Clipper Cove and shoreline access to Treasure Island.
4. Conduct audits of the TIDA John Stewart Company Agreement and the TIHDI Sharing Agreement.
5. Issue, manage, and award the Venue Management RFP.
6. Complete renovation projects of Building 1 and Casa de la Vista.
7. Manage renovation project of the Fogwatch.
8. Revise and update boilerplate Use Permit and establish green/recycling obligations and guidelines for subleases and Use-Permits.
9. Update Insurance requirements for permits and leases.
10. Develop Annual Inspection Program to assure that all Subtenants are compliant with all Terms and Conditions of their Sublease with an emphasis on Use, Premises/Space and Insurance Obligations.
11. Increase the visibility of Treasure Island for Special Events.
  - a. Keep ad current in Here Comes the Guide, but eliminate other ads.
  - b. Network and Market to the trades via ISES, MPI, and NACE.
  - c. Network and Market to the Destination Management Companies.
  - d. Create a process by which we can evaluate which marketing programs are successful, and understand our return on investment.

12. Establishment/opening of TI skate park.
13. Establish Treasure Island History Society.
14. Create Standard Operating Procedures for Leasing.
15. Develop Work Order System to maintain DPW tasks.
16. Secure more vendors to provide food to the island residents.
17. Actively engage the community in MTA's Transit Effectiveness Project.
18. Create a new logo and branding image for Treasure Island to be used during this current interim period.
19. Work with the Department of the Environment and Golden Gate Disposal on an education and outreach program for the residents and commercial tenants to improve our waste and recycling diversion, thus helping the City achieve its goal of 75% by 2010.
20. Create a water and utilities conservation program on Treasure Island for both residential and commercial tenants.
21. Complete the Treasure Island readdressing project.
22. Create a "Welcome Package" for all new commercial tenants to assist them in transitioning to the island.
23. Create a volunteer policy for Treasure Island.
24. Create a virtual Library with the San Francisco Public Library.
25. Direct YMCA to assess the current and future needs of the Island residents and adjust programs accordingly.
26. Conclude discussion with Wells Fargo to get an ATM.
27. Organize NERT Training for residents and commercial tenants.
28. Conduct an audit of CAM charges and update CAM receipts as necessary.







**AGENDA ITEM 10**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of May 9, 2007**

**Subject:** Resolution Authorizing the Director of Island Operations To Execute a Sublease with Bay Area Air Quality Management District on a month-to-month basis through November 30, 2007 (*Action Item*)

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

**BACKGROUND**

Bay Area Air Pollution Control District was a special air pollution control district created by the California Legislature on September 7, 1955. In 1976, the California Legislature created the Bay Area Air Quality Management District ("BAAQMD") as the successor to the Bay Area Air Pollution Control District, giving it jurisdiction in the nine Bay Area counties from Sonoma to Santa Clara to measure air pollution and to impose regulations to control polluting emissions.

One aspect of BAAQMD's responsibilities is air monitoring. The District maintains air monitoring stations from Richmond through San Jose. The Office of Homeland Security has awarded BAAQMD the responsibility to monitor air in the Bay Area for airborne contaminants. BAAQMD has asked the Authority for permission to establish one such air monitoring station on Treasure Island.

Treasure Island was identified as a preferred site because the prevailing winds carry airborne materials from San Francisco across the Island. The station will capture measurements for specific, but undisclosed, airborne contaminants that may have been intentionally released in San Francisco. Contaminants will be captured in a filter media that will be collected by one to three technicians each day, 365 days a year. Analysis of materials will be conducted at a laboratory that will not be located on Treasure Island.

BAAQMD has requested a Sublease with the Authority for ten (10) square feet on Treasure Island at a rent of Three Hundred Dollars (\$300) (\$30psf) per month. If approved, the Sublease would be on a triple net basis, meaning the Subtenant would be responsible for all costs, including utilities, taxes, insurance, permits, plans and other costs. The equipment has very low power requirements. Based on information regarding equipment power requirements provided by BAAQMD, staff of the San Francisco Public Utilities Commission ("SFPUC") has recommended that the Subtenant pay the SFPUC a flat fee of Eighty Three Dollars (\$83) a month for electrical power. No other utilities services will be required.

## MARKET RATE COMPARABLES

Due to the small and unique nature of the leasehold request no comparable listings were found through an internet search. BAAQMD provided information about other locations where air monitoring equipment is located. Project Staff contacted management at the other locations and collected the following information. No rent is charged for an air monitoring station at a site in the Peninsula. No rent is charged for air monitoring stations in Contra Costa County. The City of San Jose charges One Thousand Two Hundred and Fifty Dollars (\$1,250) a year for one air monitoring station in downtown San Jose, and Seven Hundred and Eighty Dollars (\$780) a year for a station North of San Jose.

## RECOMMENDATION

Project Staff recommends authorizing the Director of Island Operations to execute the Sublease with the Bay Area Air Quality Management District for a month-to-month term through November 30, 2007 for 10 square feet of space on Treasure Island at a monthly rent of \$300.

## EXHIBITS

EXHIBIT A: Sublease between Treasure Island Development Authority as Sublandlord and The Bay Area Air Quality Management District as Subtenant for the Sublease of Facilities on Treasure Island Naval Air Station, San Francisco, California

Prepared by Marc McDonald, Facilities Manager  
For Mirian Saez, Director of Island Operations



1 monthly flat fee recommended by SFPUC staff of Eighty Three Dollars (\$83) a month for  
2 electricity; now therefore, be it ,

3 RESOLVED, That the Authority hereby approves and authorizes the Director of  
4 Island Operations to execute the Sublease with the BAAQMD for a month-to-month  
5 term through November 30, 2007 in substantially the form attached as Exhibit A.

6  
7 **CERTIFICATE OF SECRETARY**

8 I hereby certify that I am the duly elected Secretary of the Treasure Island  
9 Development Authority, a California nonprofit public benefit corporation, and that the  
10 above Resolution was duly adopted and approved by the Board of Directors of the  
11 Authority at a properly noticed meeting on May 9, 2007.

12  
13 \_\_\_\_\_  
14 John Elberling, Secretary  
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RECYCLED PAPER MADE FROM 100% POST CONSUMER CONTENT



**SUBLEASE**

**between**

**TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

**and**

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

**as Subtenant**

**For the Sublease**

**Premises at a Location Acceptable to the Authority**

**on**

**Treasure Island Naval Station  
San Francisco, California**

**June 1, 2007**

## TREASURE ISLAND SUBLEASE

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### LIST OF EXHIBITS:

- EXHIBIT A – Master Lease
- EXHIBIT B – Diagram of Premises
- EXHIBIT C – Cover Page of Seismic Report
- EXHIBIT D – Rules and Regulations
- EXHIBIT E – Utilities
- EXHIBIT F – TIHDI Work Force Hiring Plan

## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated June 1, 2007, is by and between the Treasure Island Development Authority, a California public benefit corporation ("Sublandlord"), and The Bay Area Air Quality Management District, a governmental agency ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated September 4, 1998, as amended from time to time (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord certain real property located on Treasure Island Naval Station (the "Property"), as more particularly described in the Master Lease.

B. The Property includes a site that is appropriate for air quality testing instruments at a location acceptable to the Authority on Treasure Island as more particularly shown on the map attached hereto as Exhibit B (the "Premises").

C. Subtenant desires to sublet the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### **1. PREMISES**

1.1. **Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises.

#### **1.2. As Is Condition of Premises.**

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them ("Subtenant's Agents"), of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic

Report referenced in Section 1.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises ("Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below), (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use by Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 1.2(b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that any structures or improvements located on or about the Premises, may fail structurally and collapse.

## 2. COMPLIANCE WITH MASTER LEASE

2.1. **Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein.

2.2. **Performance of Master Landlord's Obligations.** Sublandlord does not assume the obligations of Master Landlord under the Master Lease. With respect to work, services, repairs, restoration, the provision of utilities or HVAC services, or the performance of any other obligations required of Master Landlord under the Master Lease, Sublandlord's sole obligation with respect thereto shall be to request the same, on request in writing by Subtenant, and to use reasonable efforts to obtain the same from Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any such work, services, repairs, repainting, restoration, the provision of utilities or HVAC services, or the performance of any of Master Landlord's obligations under the Master Lease.

2.3. **Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

2.4. **Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

2.5. **Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

### 3. TERM

3.1. **Term of Sublease.** The term of this Sublease (the "Term") shall commence on June 1, 2007 (the "Commencement Date"), and continue on a month-to-month basis through November 30, 2007 (the "Expiration Date"), unless sooner terminated pursuant to the terms of this Sublease. Either Party may, in its sole discretion, terminate this Sublease by giving thirty (30) days prior written notice to the other Party.

3.2. **Effective Date.** This Sublease shall become effective on the date (the "Effective Date") upon the later of (i) the Parties' execution and delivery of this Sublease, (ii) Sublandlord's Board of Director's approval of this Sublease at a duly noticed meeting, or (iii) the Commencement Date.

### 4. RENT

4.1. **Base Rent.** Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord base rent in the amount of Three Hundred Dollars (\$300.00) per month (the "Base Rent"). Base Rent shall be paid to Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

4.2. **Additional Charges.** In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes, common area maintenance charges, and other costs, impositions and expenses related to the Premises as provided in Section 5 hereof, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder, all utility charges, and any common area maintenance charge ("CAM Charge") levied on the Premises (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

4.3. **Late Charge.** If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord

for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

**4.4. Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of the greater of the interest rate in effect that has been established by the Secretary of Treasury pursuant to Public Law, as described in Section 33 of the Master Lease, or ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

## **5. TAXES, ASSESSMENTS AND OTHER EXPENSES**

### **5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

**5.2. Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without

limitation, the cost of any utilities, the CAM Charge, and all property maintenance, including landscaping of parking areas and any other services necessary for Subtenant's use.

**5.3. Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

## **6. USE; COVENANTS TO PROTECT PREMISES**

**6.1. Subtenant's Permitted Use.** Subtenant may use the Premises for installation, monitoring and management of air monitoring instruments, but for no other purpose without the prior written consent of Sublandlord, which consent may be given or withheld in Sublandlord's sole and absolute discretion.

**6.2. Subtenant's Access to the Premises.** As provided in Section 30 of the Master Lease, Subtenant shall have access to the Premises on a 24-hours per day, seven days a week basis; provided, however, Subtenant shall coordinate such access with the local representative of Master Landlord.

**6.3. Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time.

**6.4. Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"); provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

**6.5. No Interference with Navy Operations.** Subtenant shall not conduct operations, nor

make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over Subtenant's use of the Premises in the event of any conflict; provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

**6.6. No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas on or about the Property outside of the Premises.

## **7. ALTERATIONS**

**7.1. Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may be given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications for any Alterations approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of construction on the Premises at all times.

**7.2. Historic Properties.** Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to any improvements on the Premises (i) which will affect the historic characteristics of the improvements or modify the appearance of the exterior of the improvements without Master Landlord's and Sublandlord's prior written consent, or (ii) if such Alterations would preclude qualifying the improvements for inclusion on the National Register for Historic Places.

**7.3. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of this Section 7 shall be and

remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.

**7.4. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment used upon or installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and shall be removed by Subtenant, subject to the provisions of Section 18 hereof. Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

**7.5. Sublandlord's Alterations.** Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the improvements on the Premises; provided, that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the purposes stated herein.

## **8. REPAIRS AND MAINTENANCE**

**8.1. Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

**8.2. Utilities.** Sublandlord shall provide the basic utilities and services described in the attached Exhibit E (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole cost, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay, without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates

provided in and as otherwise set forth in Exhibit E.

**8.3. Intentionally Omitted.**

**8.4. Janitorial Services.** Subtenant shall provide all janitorial services for the Premises.

**8.5. Pest Control.** Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

**8.6. Trash.** Subtenant shall deposit all trash into designated containers in the Premises in compliance with the Rules and Regulations attached hereto as Exhibit F. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

**8.7. No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

**9. LIENS**

**9.1. Liens.** Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

**10. COMPLIANCE WITH LAWS**

**10.1. Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary; provided, however Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* and Title 24 of the California Code of Regulations, and all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

**10.2. Regulatory Approvals.**

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation, any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") Sublandlord, City and Master Landlord, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties"), against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall

not do anything, or permit anything to be done, in or about the Premises or to any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general liability, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

## **11. ENCUMBRANCES**

**11.1. Encumbrance By Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## **12. DAMAGE OR DESTRUCTION**

**12.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, fire, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in Section 16 below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more than One Thousand Dollars (\$1,000.00) to repair, either party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by a casualty pursuant to which this Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, then Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

**12.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to

the extent such rights are inconsistent with the provisions hereof.

### 13. ASSIGNMENT AND SUBLETTING

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, sublease or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises (a "Transfer"), without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion. Subtenant shall provide Sublandlord with a written notice of its intention to Transfer this Sublease or the Premises, together with a copy of the proposed Transfer agreement at least thirty (30) days prior to the commencement date of the proposed Transfer. Subtenant shall provide Sublandlord with such information regarding the proposed Transfer as Sublandlord may reasonably request.

### 14. DEFAULT; REMEDIES

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

- (a) **Failure to Pay Rent.** Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within five (5) days after such sums are due;
- (b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease; provided, Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.
- (c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and
- (d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## **15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION**

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused solely by the gross negligence or

willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant, on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES,

WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the Indemnified Parties' decision to Sublease the Premises to Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) **In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:**

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Subtenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

**15.2. Subtenant's Indemnity.** Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses arising out of Subtenant's use of the Premises, including but not limited to, any Losses arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises; (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this

Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises; and (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, in, on, or about the Premises or any Alterations, except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused solely by the gross negligence or intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

## **16. INSURANCE**

**16.1. Subtenant's Insurance.** Without in any way limiting Subtenant's liability pursuant to Section 15 hereof, Subtenant shall procure and maintain throughout the Term of this Sublease the following insurance and pay the cost thereof:

- (a) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.
- (b) Workers' compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than One Million Dollars (\$1,000,000) each accident.
- (c) Business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

**16.2. General Requirements.** All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably

approved by Sublandlord.

(a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Subtenant as the insured and Sublandlord and the Master Landlord as additional insureds.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in Section 20.1.

**16.3. Proof of Insurance.** Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(a) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such certificates or policies, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.

**16.4. No Limitation on Indemnities.** Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

**16.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

**16.6. Subtenant's Personal Property.** Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

**16.7. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## **17. ACCESS BY SUBLANDLORD**

### **17.1. Access to Premises by Sublandlord.**

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

**17.2. Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## **18. SURRENDER**

**18.1. Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

**18.2. No Holding Over.** If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises. Subtenant shall have no right to hold over without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and absolute discretion. If Sublandlord holds over the Premises or any part thereof after expiration or earlier termination of this Sublease, such holding over shall be terminable upon written notice by Sublandlord, and the Base Rent shall be increased to two hundred percent (200%) of the Base Rent in effect immediately prior to such holding over, and such holdover shall otherwise be on all the other terms and conditions of this Sublease. This Section shall not be construed as Sublandlord's permission for Subtenant to hold

over. Acceptance of any holdover Base Rent by Sublandlord following expiration or termination of this Sublease shall not constitute an extension or renewal of this Sublease.

**18.3. Security Deposit.** Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount of Six Hundred Dollars (\$600.00) as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 18.3, Sublandlord shall return such security deposit to Subtenant within forty-five (45) days of the termination of this Sublease.

## **19. HAZARDOUS MATERIALS**

**19.1. No Hazardous Materials.** Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Sections 9601 et seq.), or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for

Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Subtenant agrees that it shall comply, without limiting the foregoing, with the provisions of Article 21 of the San Francisco Health Code including, without limitation, regarding obtaining and complying with the requirements of an approved hazardous materials management plan, and with the requirements of the environmental protection provisions provided for in Section 13 of the Master Lease.

**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory

agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**19.3. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Subtenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises as described in the EBS and the FOSL. In addition, California's Proposition 65, Health and Safety Code Section 25249.6 et seq., requires notice that some of these Hazardous Materials are known by the State of California to cause cancer or reproductive harm. By execution of this Sublease, Subtenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Sections 25249.6 et seq., 25359.7 and related statutes.

## **20. GENERAL PROVISIONS**

**20.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord:	Treasure Island Development Authority Treasure Island Project Office 410 Avenue of Palms Building 1, 2 <sup>nd</sup> Floor Treasure Island San Francisco, CA 94130 Attn: Director of Island Operations Fax No.: 415-274-0299
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with a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Fax No.: (415) 554-4755
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Notice Address of Subtenant:  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA. 94109  
Attn: Mr. Eric Stevenson  
Fax No.: (415) 749-5082

Notice Address of Master Landlord:

DEPARTMENT OF THE NAVY  
BASE REALIGNMENT AND CLOSURE  
PROGRAM MANAGEMENT OFFICE WEST  
1455 FRAZEE ROAD, SUITE 900  
SAN DIEGO, CA 92108-4310

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice.

**20.2. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment of Rent due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

**20.3. Amendments.** Neither this Sublease nor any term or provision hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**20.4. Authority.** If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosures set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**20.5. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**20.6. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**20.7. Successors and Assigns.** Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**20.8. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker

or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**20.9. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**20.10. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

**20.11. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

**20.12. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Sublease, reasonable fees of attorneys in the Office of the San Francisco City Attorney (Sublandlord's General Counsel) shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Further, for purposes of this Sublease, the term "attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals.

librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. The term "attorney" shall have the same meaning as the term "counsel".

**20.13. Time of Essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**20.14. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**20.15. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

**20.16. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

**20.17. Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

**20.18. Non-Liability of Indemnified Parties' Officials, Employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Sublease.

**20.19. No Discrimination.** Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

**20.20. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20.21. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord.

## **21. SPECIAL PROVISIONS**

**21.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

**21.2. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

**21.3. TIHDI Job Broker.** Subtenant shall comply with the requirements of the TIHDI Work Force Hiring Plan attached hereto as Exhibit F.

**21.4. Local Hiring.** Subtenant further agrees to use good faith efforts to hire residents of the City and County of San Francisco at all levels of Subtenant's personnel needs and to contract with local businesses for Subtenant's purchase of supplies, materials, equipment or services.

### **21.5. Non-Discrimination in City Contracts and Benefits Ordinance.**

(a) **Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) **Sub-Subleases and Other Subcontracts.** Subtenant shall include in all sub-subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such

sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) **Non-Discrimination in Benefits.** Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Sublease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **HRC Form.** As a condition to this Sublease, Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Subtenant hereby represents that prior to execution of this Sublease, (i) Subtenant executed and submitted to the HRC Form HRC-128-101 with supporting documentation; and (ii) the HRC approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**21.6. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord

under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260, et seq.), except as otherwise specifically provided in this Sublease with respect to a condemnation of the Premises.

**21.7. MacBride Principles - Northern Ireland.** The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**21.8. Tropical Hardwood and Virgin Redwood Ban.** The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Section 802(b) and 803(b) of the San Francisco Environment Code, Subtenant shall not provide any items to the construction of tenant improvements or Alterations in the Premises, or otherwise in the performance of this Sublease, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**21.9. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**21.10. Wages and Working Conditions.** Subtenant agrees that any person performing labor in the construction of any tenant improvements and any Alterations to the Premises, which Subtenant provides under this Sublease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Subtenant shall include, in any contract for construction of such tenant improvements and Alterations, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord upon request, certified payroll reports with respect to all persons

performing labor in the construction of such tenant improvement work or any Alterations to the Premises.

**21.11. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Sublandlord or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

**21.12. Pesticide Prohibition.** Subtenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Subtenant to submit to Sublandlord an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Subtenant may need to apply to the Premises during the terms of this Sublease, (b) describes the steps Subtenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as Subtenant's primary IPM contact person with the City. In addition, Subtenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

**21.13. First Source Hiring Ordinance.** The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after Sublandlord adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Subtenant shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

**21.14. Sunshine Ordinance.** In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City departments and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

**21.15. Conflicts of Interest.** Through its execution of this Sublease, Subtenant acknowledges

that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Subtenant becomes aware of any such fact during the Term of this Sublease, Subtenant shall immediately notify Sublandlord.

**21.16. Charter Provision.** This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

**21.17. Requiring Health Benefits for Covered Employees.** Unless exempt, Subtenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Sublease as though fully set forth. The text of the HCAO is available on the web at [www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml](http://www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml). Capitalized terms used in this Section and not defined in this Sublease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Subtenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Subtenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Subtenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (a) above.

(c) Subtenant's failure to comply with the HCAO shall constitute a material breach of this Sublease. Sublandlord shall notify Subtenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Sublease for violating the HCAO, Subtenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Subtenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Sublandlord shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Sublandlord.

(d) Any Subcontract entered into by Subtenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Subtenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Subtenant shall be responsible for its

Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Sublandlord may pursue the remedies set forth in this Section against Subtenant based on the Subcontractor's failure to comply, provided that Sublandlord has first provided Subtenant with notice and an opportunity to obtain a cure of the violation.

- (e) Subtenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Sublandlord with regard to Subtenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- (f) Subtenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- (g) Subtenant shall keep itself informed of the current requirements of the HCAO.
- (h) Subtenant shall provide reports to Sublandlord in accordance with any reporting standards promulgated by Sublandlord under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- (i) Subtenant shall provide Sublandlord with access to records pertaining to compliance with the HCAO after receiving a written request from Sublandlord to do so and being provided at least five (5) business days to respond.
- (j) Sublandlord may conduct random audits of Subtenant to ascertain its compliance with HCAO. Subtenant agrees to cooperate with Sublandlord when it conducts such audits.
- (k) If Subtenant is exempt from the HCAO when this Sublease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Subtenant later enters into an agreement or agreements that cause Subtenant's aggregate amount of all agreements with Sublandlord to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Subtenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

**21.18. Notification of Limitations on Contributions.** Through its execution of this Sublease, Subtenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the

board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

**21.19. Preservative-Treated Wood Containing Arsenic.** As of July 1, 2003, Subtenant may not purchase preservative-treated wood products containing arsenic in the performance of this Sublease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Subtenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Subtenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

**SUBTENANT:**

**Bay Area Air Quality Management District,  
an Air Pollution Control District**

---

**By: Jack Broadbent  
Its: Air Pollution Control Officer**

**SUBLANDLORD:**

**Treasure Island Development Authority**

---

**By: Mirian Saez  
Its: Director of Island Operations**

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA, City Attorney**

**By:**

---

**Deputy City Attorney**

EXHIBIT A

MASTER LEASE

EXHIBIT B

DIAGRAM OF PREMISES

EXHIBIT C

COVER PAGE OF THE SEISMIC REPORT

## EXHIBIT D

### RULES AND REGULATIONS

1. All rules and regulations set out in the Master Lease shall prevail.
2. No signs, advertisements, or notices shall be attached to, or placed on, the exterior or interior of the Building or elsewhere on the Property, without prior written approval of Sublandlord.
3. Subtenant's contractors and invitees, while on the Premises or Subtenant's parking area, shall be subject to these Rules and Regulations, and will be subject to direction from Sublandlord and its agents, but will not be an agent or contractor of the Sublandlord or its agents. Subtenant's contractors shall be licensed by the State, insured and bonded at the amount requested by the Sublandlord.
4. Subtenant shall install and maintain at Subtenant's expense, any life safety equipment required by governmental rules, regulations or laws to be kept on the Premises.

EXHIBIT E

STANDARD UTILITIES AND SERVICES AND RATES

Tenant shall be responsible for all utilities services to the premises.  
Utilities shall be provided by the San Francisco Public Utilities Commission  
Contact San Francisco Public Commission for rates and terms of service.

Attn: Mr. Vic Zorzynski (415) 274-0333

Bay Area Air Quality Management District has provided Mr. Victor Zorzynski of the San Francisco Public Utilities District specifications describing power requirements for the equipment. Base on the information provided Mr. Zorzynski has established a flat fee of Eighty-Three Dollars (\$83.00) per month for electrical power. This rate is subject to adjustment on demand of the San Francisco Public Utilities District.

**EXHIBIT F**

**WORKFORCE HIRING AGREEMENT**

Contact Treasure Island Homeless Development Initiative  
Attn: Ms. Sherry Williams (415) 274-0311





**AGENDA ITEM 11**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of May 9, 2007**

**Subject:** Resolution Authorizing the Director of Island Operations to Execute a Sublease with Tri-California Events, Inc. on a Month-to-Month basis through November 30, 2007  
(*Action Item*)

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

**BACKGROUND**

Tri-California Events, Inc. ("Tri-California") has conducted special event triathlons in the City of San Francisco since 1998. Events have included Escape from Alcatraz as well as the Treasure Island Triathlon. The Treasure Island Triathlon, which has been an annual event since 2001, includes a 40k bike course, a 10k run and a 1.5k swim in Clipper Cove. The most recent Treasure Island Triathlon was held on November 4<sup>th</sup> and 5<sup>th</sup>, 2006. Over 2,300 participants competed in this event, including 100 world class triathletes. The 2007 Treasure Island Triathlon will be held November 9<sup>th</sup> through 11<sup>th</sup>, 2007. Participants will include 75 elite women and 75 elite men from around the world who will be earning points in this event for the 2008 Beijing Olympics.

Tri-California has requested three thousand and sixty (3,060) square feet of space in Building 216 for the purpose of storing barricades and other traffic management equipment that is used during the Treasure Island Triathlon and other races produced by Tri-California. The proposed monthly rental fee is Four Hundred and Fifty-Nine Dollars (\$459.00) or \$0.15 psf NNN for a month-to-month term through November 30, 2007. The use is strictly storage in a paved, fenced shed. No utilities will be required.

**MARKET RATE COMPARABLES**

A review of listings on the internet revealed no comparables. According to the Market Rent Appraisal of Various Treasure Island Properties performed by Carneghi-Blum & Partners, Inc. in February of 2007, Building 216 has no economic rental value. According to the appraisal report, it might be possible to generate revenue from a building with no economic rental value; however, the constraints imposed by term and building condition do not allow the building to be considered competitive in the San Francisco Bay Area market.

**RECOMMENDATION**

Project Staff recommends authorizing the Director of Island Operations to execute the Sublease with Tri-California for a month-to-month term through November 30, 2007 for 3,060 square feet of space on Treasure Island at a monthly rent of \$459.00.

## EXHIBITS

EXHIBIT A: Sublease between Treasure Island Development Authority as Sublandlord and Tri-California Events, Inc. as Subtenant for the Sublease of approximately three thousand and sixty square foot portion of Building 216 on 11<sup>th</sup> Street, Treasure Island Naval Air Station, San Francisco, California.

Prepared by Marc McDonald, Facilities Manager  
For Mirian Saez, Director of Island Operations

1 [Tri-California Events, Inc. Sublease]

2  
3 **Resolution authorizing the Director of Island Operations to execute a Sublease with Tri-**  
4 **California Events, Inc. on a month-to-month basis through November 30, 2007.**

5 WHEREAS, Former Naval Station Treasure Island is a military base located on  
6 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by  
7 the United States of America (the "Navy"); and,

8 WHEREAS, The Base was selected for closure and disposition by the Base  
9 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
10 subsequent amendments; and,

11 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
12 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
13 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
14 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
15 conversion of the Base for the public interest, convenience, welfare and common benefit of  
16 the inhabitants of the City and County of San Francisco; and

17 WHEREAS, Tri-California Events, Inc., the producer of the Treasure Island Triathlon,  
18 has requested premises consisting of Three Thousand and Sixty (3,060) square feet of space  
19 in Building 216 on Treasure Island for the purpose of storing barricades and other traffic  
20 management equipment; and,

21 WHEREAS, Project Staff has negotiated the terms of a Sublease with Tri-California  
22 Events, Inc. by which Tri-California Events, Inc. will pay a monthly rental fee of Four Hundred  
23 and Fifty Nine Dollars (\$459) NNN for the premises; now therefore, be it ,

24 **RESOLVED**, That the Authority hereby approves and authorizes the Director of  
25 Island Operations to execute the Sublease with Tri-California Events, Inc. for a term

1 through November 30, 2007, provided that nothing herein shall limit the Authority's  
2 ability to terminate the Sublease on thirty days notice as provided in the Sublease;  
3 and, Be It Further,

4 RESOLVED, That the Authority hereby approves and authorizes the Director of  
5 Island Operations to establish the monthly rent for \$459 for the 3,060 square feet that  
6 will be used by the Subtenant in Building 216 on Treasure Island; and, be it,

7 FURTHER RESOLVED, That the Authority hereby approves and authorizes the  
8 Director of Island Operations to execute the Sublease in substantially the form  
9 attached as Exhibit A.

10  
11 **CERTIFICATE OF SECRETARY**

12 I hereby certify that I am the duly elected Secretary of the Treasure Island  
13 Development Authority, a California nonprofit public benefit corporation, and that the  
14 above Resolution was duly adopted and approved by the Board of Directors of the  
15 Authority at a properly noticed meeting on May 9, 2007.

16  
17  
18 John Elberling, Secretary



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**SUBLEASE**

**between**

**TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

**and**

**TRI-CALIFORNIA EVENTS, INC.**

**as Subtenant**

**For the Sublease of**

**an approximately three thousand sixty square foot portion of Building 216 on 11<sup>TH</sup> Street**

**Treasure Island Naval Station  
San Francisco, California**

**May \_\_\_\_, 2007**

## TREASURE ISLAND SUBLEASE

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### LIST OF EXHIBITS:

- EXHIBIT A – Master Lease
- EXHIBIT B – Diagram of Premises
- EXHIBIT C – Cover Page of Seismic Report
- EXHIBIT D – Rules and Regulations
- EXHIBIT E – Utilities
- EXHIBIT F – TIHDI Work Force Hiring Plan

## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated May \_\_\_\_, 2007, is by and between the Treasure Island Development Authority, a California public benefit corporation ("Sublandlord"), and Tri-California Events, Inc., a California Corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated September 4, 1998, as amended from time to time (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord certain real property located on Treasure Island Naval Station (the "Property"), as more particularly described in the Master Lease.

B. The Property includes an approximately three thousand sixty (3,060) square foot portion of Building 216 on 11<sup>th</sup> Street on Treasure Island, San Francisco, California as more particularly shown on the map attached hereto as Exhibit B (the "Premises").

C. Subtenant desires to sublet the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### **1. PREMISES**

**1.1. Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises.

### **1.2. As Is Condition of Premises.**

**(a) Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them ("Subtenant's Agents"), of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 1.2(c) below and the Joint Inspection Report referenced in Section 6

of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises ("Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below), (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use by Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 1.2(b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that any structures or improvements located on or about the Premises, may fail structurally and collapse.

## 2. COMPLIANCE WITH MASTER LEASE

2.1. **Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein.

2.2. **Performance of Master Landlord's Obligations.** Sublandlord does not assume the obligations of Master Landlord under the Master Lease. With respect to work, services, repairs, restoration, the provision of utilities or HVAC services, or the performance of any other obligations required of Master Landlord under the Master Lease, Sublandlord's sole obligation with respect thereto shall be to request the same, on request in writing by Subtenant, and to use reasonable efforts to obtain the same from Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any such work, services, repairs, repainting, restoration, the provision of utilities or HVAC services, or the performance of any of Master Landlord's obligations under the Master Lease.

2.3. **Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

2.4. **Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

2.5. **Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

### 3. TERM

3.1. **Term of Sublease.** The term of this Sublease (the "Term") shall commence on May 11, 2007 (the "Commencement Date"), and continue on a month-to-month basis through November 30, 2007 (the "Expiration Date"), unless sooner terminated pursuant to the terms of this Sublease. Either Party may, in its sole discretion, terminate this Sublease by giving thirty (30) days prior written notice to the other Party.

3.2. **Effective Date.** This Sublease shall become effective on the date (the "Effective Date") upon the later of (i) the Parties' execution and delivery of this Sublease, (ii) Sublandlord's Board of Director's approval of this Sublease at a duly noticed meeting, or (iii) the Commencement Date.

### 4. RENT

4.1. **Base Rent.** Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord base rent in the amount of Four Hundred and Fifty Nine Dollars (\$459.00) per month (the "Base Rent"). Base Rent shall be paid to Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

4.2. **Additional Charges.** In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes, common area maintenance charges, and other costs, impositions and expenses related to the Premises as provided in Section 5 hereof, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder, all utility charges, and any common area maintenance charge (the "CAM Charge") levied by the Sublandlord on the Premises (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

4.3. **Late Charge.** If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such

failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

**4.4. Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of the greater of the interest rate in effect that has been established by the Secretary of Treasury pursuant to Public Law, as described in Section 33 of the Master Lease, or ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

## **5. TAXES, ASSESSMENTS AND OTHER EXPENSES**

### **5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

**5.2. Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be

responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, the CAM Charge, and all property maintenance, including landscaping of parking areas and any other services necessary for Subtenant's use.

**5.3. Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

## **6. USE; COVENANTS TO PROTECT PREMISES**

**6.1. Subtenant's Permitted Use.** Subtenant may use the Premises for storage of barricades, cones, delineators and other traffic safety equipment, but for no other purpose without the prior written consent of Sublandlord, which consent may be given or withheld in Sublandlord's sole and absolute discretion.

**6.2. Subtenant's Access to the Premises.** As provided in Section 30 of the Master Lease, Subtenant shall have access to the Premises on a 24-hours per day, seven days a week basis; provided, however, Subtenant shall coordinate such access with the local representative of Master Landlord.

**6.3. Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time.

**6.4. Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"); provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

6.5. **No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over Subtenant's use of the Premises in the event of any conflict; provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

6.6. **No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas on or about the Property outside of the Premises.

## 7. ALTERATIONS

7.1. **Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications for any Alterations approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of construction on the Premises at all times.

7.2. **Historic Properties.** Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to any improvements on the Premises (i) which will affect the historic characteristics of the improvements or modify the appearance of the exterior of the improvements without Master Landlord's and Sublandlord's prior written consent, or (ii) if such Alterations would preclude qualifying the improvements for inclusion on the National Register for Historic Places.

7.3. **Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of this Section 7 shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.

7.4. **Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment used upon or installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and shall be removed by Subtenant, subject to the provisions of Section 18 hereof. Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

7.5. **Sublandlord's Alterations.** Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the improvements on the Premises; provided, that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the purposes stated herein.

## **8. REPAIRS AND MAINTENANCE**

8.1. **Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

8.2. **Utilities.** Sublandlord shall provide the basic utilities and services described in the attached Exhibit E (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole cost, any utilities or services other than or in excess of the Standard Utilities and Services that

Subtenant may need for its use of the Premises. Subtenant shall pay, without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit E.

**8.3. Intentionally Omitted.**

**8.4. Janitorial Services.** Subtenant shall provide all janitorial services for the Premises.

**8.5. Pest Control.** Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

**8.6. Trash.** Subtenant shall deposit all trash into designated containers in the Premises in compliance with the Rules and Regulations attached hereto as Exhibit F. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

**8.7. No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

**9. LIENS**

**9.1. Liens.** Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

## 10. COMPLIANCE WITH LAWS

**10.1. Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary; provided, however Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* and Title 24 of the California Code of Regulations, and all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

### 10.2. Regulatory Approvals.

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation, any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") Sublandlord, City and Master Landlord, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties"), against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' fees and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or to any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general liability, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

## **11. ENCUMBRANCES**

**11.1. Encumbrance By Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## **12. DAMAGE OR DESTRUCTION**

**12.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, fire, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in Section 16 below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more than One Thousand Dollars (\$1,000) to repair, either party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by a casualty pursuant to which this Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, then Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

**12.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives

and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### 13. ASSIGNMENT AND SUBLETTING

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, sublease or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises (a "Transfer"), without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion. Subtenant shall provide Sublandlord with a written notice of its intention to Transfer this Sublease or the Premises, together with a copy of the proposed Transfer agreement at least thirty (30) days prior to the commencement date of the proposed Transfer. Subtenant shall provide Sublandlord with such information regarding the proposed Transfer as Sublandlord may reasonably request.

### 14. DEFAULT; REMEDIES

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Failure to Pay Rent.** Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within five (5) days after such sums are due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease; provided, Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or

enacted.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## **15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION**

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever,

including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused solely by the gross negligence or willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

- (a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.
- (b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.
- (c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.
- (d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant, on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the Indemnified Parties' decision to Sublease the Premises to Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) **In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:**

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Subtenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

**15.2. Subtenant's Indemnity.** Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses arising out of Subtenant's use of the Premises, including but not limited to, any Losses arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees.

howsoever or by whomsoever caused, occurring in, on or about the Premises; (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises; and (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, in, on, or about the Premises or any Alterations, except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused solely by the gross negligence or intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

## **16. INSURANCE**

**16.1. Subtenant's Insurance.** Without in any way limiting Subtenant's liability pursuant to Section 15 hereof, Subtenant shall procure and maintain throughout the Term of this Sublease the following insurance and pay the cost thereof:

(a) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.

(b) Workers' compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than One Million Dollars (\$1,000,000) each accident.

(c) Business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

(d) All risk property insurance insuring the Premises including, without limitation, any improvements, Alterations, furniture, fixtures and equipment located thereon, in an amount not less than Full Replacement Value.

**16.2. General Requirements.** All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.

(a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Subtenant as the insured and Sublandlord and the Master Landlord as additional insureds.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in Section 20.1.

**16.3. Proof of Insurance.** Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(a) above, such certificate shall state, among other

things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such certificates or policies, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.

**16.4. No Limitation on Indemnities.** Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

**16.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

**16.6. Subtenant's Personal Property.** Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

**16.7. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## **17. ACCESS BY SUBLANDLORD**

### **17.1. Access to Premises by Sublandlord.**

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any

portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

**17.2. Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## **18. SURRENDER**

**18.1. Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

**18.2. No Holding Over.** If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises. Subtenant shall have no right to hold over without the prior written consent of Sublandlord, which consent

may be withheld in Sublandlord's sole and absolute discretion. If Sublandlord holds over the Premises or any part thereof after expiration or earlier termination of this Sublease, such holding over shall be terminable upon written notice by Sublandlord, and the Base Rent shall be increased to two hundred percent (200%) of the Base Rent in effect immediately prior to such holding over, and such holdover shall otherwise be on all the other terms and conditions of this Sublease. This Section shall not be construed as Sublandlord's permission for Subtenant to hold over. Acceptance of any holdover Base Rent by Sublandlord following expiration or termination of this Sublease shall not constitute an extension or renewal of this Sublease.

**18.3. Security Deposit.** Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount of Nine Hundred and Twenty Dollars (\$920.00) as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 18.3, Sublandlord shall return such security deposit to Subtenant within forty-five (45) days of the termination of this Sublease.

## **19. HAZARDOUS MATERIALS**

**19.1. No Hazardous Materials.** Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Sections 9601 et seq.), or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural

gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Subtenant agrees that it shall comply, without limiting the foregoing, with the provisions of Article 21 of the San Francisco Health Code including, without limitation, regarding obtaining and complying with the requirements of an approved hazardous materials management plan, and with the requirements of the environmental protection provisions provided for in Section 13 of the Master Lease.

**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any

Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**19.3. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Subtenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises as described in the EBS and the FOSL. In addition, California's Proposition 65, Health and Safety Code Section 25249.6 et seq., requires notice that some of these Hazardous Materials are known by the State of California to cause cancer or reproductive harm. By execution of this Sublease, Subtenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Sections 25249.6 et seq., 25359.7 and related statutes.

## **20. GENERAL PROVISIONS**

**20.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord:	Treasure Island Development Authority Treasure Island Project Office 410 Avenue of Palms Building 1, 2 <sup>nd</sup> Floor Treasure Island San Francisco, CA 94130 Attn: Director of Island Operations Fax No.: 415-274-0299
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with a copy to:

Office of the City Attorney  
City Hall, Room 234

1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Eileen Malley, Deputy City Attorney  
Fax No.: (415) 554-4755

Notice Address of Subtenant:  
Tri-California Events, Inc.  
1284 Adobe Lane  
Pacific Grove, Ca. 93950-5102  
Attn: Terry Dale Davis  
Fax No.: (831) 373-7731

Notice Address of Master Landlord:

DEPARTMENT OF THE NAVY  
BASE REALIGNMENT AND CLOSURE  
PROGRAM MANAGEMENT OFFICE WEST  
1455 FRAZEE ROAD, SUITE 900  
SAN DIEGO, CA 92108-4310

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice.

**20.2. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment of Rent due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of

this Sublease.

**20.3. Amendments.** Neither this Sublease nor any term or provision hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**20.4. Authority.** If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosures set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**20.5. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**20.6. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**20.7. Successors and Assigns.** Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law,

Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**20.8. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**20.9. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**20.10. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

**20.11. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

**20.12. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Sublease, reasonable fees of attorneys in the Office of the San Francisco City Attorney (Sublandlord's General Counsel) shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which

the City Attorney's services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Further, for purposes of this Sublease, the term "attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. The term "attorney" shall have the same meaning as the term "counsel".

**20.13. Time of Essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**20.14. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**20.15. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

**20.16. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

**20.17. Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

**20.18. Non-Liability of Indemnified Parties' Officials, Employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Sublease.

**20.19. No Discrimination.** Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

**20.20. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20.21. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord.

## **21. SPECIAL PROVISIONS**

**21.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

**21.2. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

**21.3. TIHDI Job Broker.** Subtenant shall comply with the requirements of the TIHDI Work Force Hiring Plan attached hereto as Exhibit F.

**21.4. Local Hiring.** Subtenant further agrees to use good faith efforts to hire residents of the City and County of San Francisco at all levels of Subtenant's personnel needs and to contract with local businesses for Subtenant's purchase of supplies, materials, equipment or services.

### **21.5. Non-Discrimination in City Contracts and Benefits Ordinance.**

**(a) Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges,

services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) **Sub-Subleases and Other Subcontracts.** Subtenant shall include in all sub-subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) **Non-Discrimination in Benefits.** Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Sublease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **HRC Form.** As a condition to this Sublease, Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Subtenant hereby represents that prior to execution of this Sublease, (i) Subtenant executed and submitted to the HRC Form HRC-12B-101 with supporting documentation; and (ii) the HRC approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**21.6. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not

be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260, et seq.), except as otherwise specifically provided in this Sublease with respect to a condemnation of the Premises.

**21.7. MacBride Principles - Northern Ireland.** The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**21.8. Tropical Hardwood and Virgin Redwood Ban.** The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Section 802(b) and 803(b) of the San Francisco Environment Code, Subtenant shall not provide any items to the construction of tenant improvements or Alterations in the Premises, or otherwise in the performance of this Sublease, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**21.9. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**21.10. Wages and Working Conditions.** Subtenant agrees that any person performing labor in the construction of any tenant improvements and any Alterations to the Premises, which Subtenant provides under this Sublease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are

provided for similar work performed in San Francisco, California. Subtenant shall include, in any contract for construction of such tenant improvements and Alterations, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord upon request, certified payroll reports with respect to all persons performing labor in the construction of such tenant improvement work or any Alterations to the Premises.

**21.11. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Sublandlord or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

**21.12. Pesticide Prohibition.** Subtenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Subtenant to submit to Sublandlord an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Subtenant may need to apply to the Premises during the terms of this Sublease, (b) describes the steps Subtenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as Subtenant's primary IPM contact person with the City. In addition, Subtenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

**21.13. First Source Hiring Ordinance.** The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after Sublandlord adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Subtenant shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

**21.14. Sunshine Ordinance.** In accordance with Section 67.24(c) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City departments and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or

other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

**21.15. Conflicts of Interest.** Through its execution of this Sublease, Subtenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Subtenant becomes aware of any such fact during the Term of this Sublease, Subtenant shall immediately notify Sublandlord.

**21.16. Charter Provision.** This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

**21.17. Requiring Health Benefits for Covered Employees.** Unless exempt, Subtenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Sublease as though fully set forth. The text of the HCAO is available on the web at [www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml](http://www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml). Capitalized terms used in this Section and not defined in this Sublease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Subtenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Subtenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Subtenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (a) above.

(c) Subtenant's failure to comply with the HCAO shall constitute a material breach of this Sublease. Sublandlord shall notify Subtenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Sublease for violating the HCAO, Subtenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Subtenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Sublandlord shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Sublandlord.

(d) Any Subcontract entered into by Subtenant shall require the Subcontractor to comply with

the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Subtenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Subtenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Sublandlord may pursue the remedies set forth in this Section against Subtenant based on the Subcontractor's failure to comply, provided that Sublandlord has first provided Subtenant with notice and an opportunity to obtain a cure of the violation.

(e) Subtenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Sublandlord with regard to Subtenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Subtenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Subtenant shall keep itself informed of the current requirements of the HCAO.

(h) Subtenant shall provide reports to Sublandlord in accordance with any reporting standards promulgated by Sublandlord under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Subtenant shall provide Sublandlord with access to records pertaining to compliance with the HCAO after receiving a written request from Sublandlord to do so and being provided at least five (5) business days to respond.

(j) Sublandlord may conduct random audits of Subtenant to ascertain its compliance with HCAO. Subtenant agrees to cooperate with Sublandlord when it conducts such audits.

(k) If Subtenant is exempt from the HCAO when this Sublease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Subtenant later enters into an agreement or agreements that cause Subtenant's aggregate amount of all agreements with Sublandlord to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Subtenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

**21.18. Notification of Limitations on Contributions.** Through its execution of this Sublease, Subtenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the

selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

**21.19. Preservation-Treated Wood Containing Arsenic.** As of July 1, 2003, Subtenant may not purchase preservative-treated wood products containing arsenic in the performance of this Sublease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Subtenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Subtenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**21.20. Resource Efficient City Buildings and Pilot Projects.** Subtenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Subtenant hereby agrees that it shall comply with all applicable provisions of such code sections.

**21.21. Food Service Waste Reduction.** Subtenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Sublease as though fully set forth. This provision is a material term of this Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Sublandlord will suffer actual damages that will be impractical or extremely difficult to determine; further, Subtenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent

breaches in the same year is a reasonable estimate of the damage that Sublandlord will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Sublandlord because of Subtenant's failure to comply with this provision.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

**SUBTENANT:**

Tri-California Events, Inc.,  
a California Corporation

By: \_\_\_\_\_  
Terry Davis

Its: President

**SUBLANDLORD:**

Treasure Island Development Authority

By: \_\_\_\_\_  
Mirian Saez

Its: Director of Island Operations

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

EXHIBIT A

MASTER LEASE

EXHIBIT B

DIAGRAM OF PREMISES

EXHIBIT C

COVER PAGE OF THE SEISMIC REPORT

## EXHIBIT D

### RULES AND REGULATIONS

1. All rules and regulations set out in the Master Lease shall prevail.
2. No signs, advertisements, or notices shall be attached to, or placed on, the exterior or interior of the Building or elsewhere on the Property, without prior written approval of Sublandlord.
3. Subtenant's contractors and invitees, while on the Premises or Subtenant's parking area, shall be subject to these Rules and Regulations, and will be subject to direction from Sublandlord and its agents, but will not be an agent or contractor of the Sublandlord or its agents. Subtenant's contractors shall be licensed by the State, insured and bonded at the amount requested by the Sublandlord.
4. Subtenant shall install and maintain at Subtenant's expense, any life safety equipment required by governmental rules, regulations or laws to be kept on the Premises.
5. Subtenant shall be solely responsible for all janitorial and cleaning services, including general maintenance and cleanliness of premises as well as parking lots and landscaped areas adjacent to the Premises.
6. Subtenant shall be solely responsible for all major capital improvements and repairs to the facilities, including major roof repairs as well as all minor repairs and maintenance to the Premises, including minor plumbing, electrical and building repairs. Subtenant shall notify Sublandlord of all conditions requiring repair and all repairs made to premises by Subtenant within 10 days of Subtenant receiving notice of conditions requiring repair.

EXHIBIT E

STANDARD UTILITIES AND SERVICES AND RATES

Tenant shall be responsible for all utilities services to the premises.  
Utilities shall be provided by the San Francisco Public Utilities Commission  
Contact San Francisco Public Commission for rates and terms of service.

Attn: Mr. Vic Zorzynski (415) 274-0333

EXHIBIT F

WORKFORCE HIRING AGREEMENT

Contact Treasure Island Homeless Development Initiative

Attn: Ms. Sherry Williams (415) 274-0311





**AGENDA ITEM 12**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of May 9, 2007**

**Subject:** Resolution Authorizing the Director of Island Operations to Waive Outstanding Rent and Penalties and to Execute a New Sublease with the Treasure Island Yacht Club for Building 298 for a Term beginning on May 1, 2007 and Continuing on a Month to Month Basis through November 30, 2007.

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

## **BACKGROUND**

Treasure Island Yacht Club ("TIYC") has been a presence on Treasure Island since the mid 1960s. In addition to being a membership club for the Treasure Island boating community, TIYC also offers opportunities for veteran groups, seniors and military retirees to participate in boating trips around the Island as well as picnics on Angel Island. The membership often provides the Coast Guard Auxiliary use of the facility for training sessions. Additionally, TIYC routinely supports and assists the TI Sailing Center in its youth oriented activities. As part of the operational closure of the Naval Station Treasure Island, TIYC was given an eviction notice to vacate its club house in Building 183 and relocated to Building 298 which it converted from a storage shed to a meeting space at its own expense. Building 183 now serves as Delancey Street's Cross Roads Café.

## **SUBLEASE AND AMENDMENTS**

In May 2001, the Board of Directors of the Treasure Island Development Authority (the "Authority") approved an Interim Sublease ("Original Sublease") with TIYC for the use of Building 298. The Original Sublease gave TIYC the right to exercise five one year options to renew. Under the terms of the Original Sublease, the initial monthly base rent for the 900 square foot structure was Four Hundred and Fifty Dollars (\$450.00), plus Common Area Maintenance ("CAM") charges of Thirty Three Dollars and seventy five cents (\$33.75). Upon each annual extension of the term of the Sublease, the monthly base rent was scheduled to increase. According to the terms of the Original Sublease, the monthly base rent was increased from \$450 to Six Hundred and Fifty Dollars (\$650), that is \$0.72 psf per month on July 1, 2002, and was scheduled to increase to Nine Hundred Dollars (\$900) or \$1.00 psf per month on July 1, 2003. On August 27, 2003, at a Special Meeting the Authority approved the First Amendment to the Original Sublease (the "First Amendment") to retain the rent at \$650.00 per month, effective July 1, 2003 through June 30, 2005. According to the minutes of the meeting, TIYC was given this rental fee concession because membership and consequently dues had not increased as originally

projected. The fact that membership had not increased was directly related to delays in the schedule for expansion of the Treasure Island Marina (the "Marina"). These delays had not been anticipated when TIYC entered into the Original Sublease. The First Amendment also called for monthly rent to increase to \$900 on July 1, 2005 and to be adjusted thereafter by the change in the Consumer Price Index (the "CPI") on July 1 of each succeeding year.

TIYC has submitted monthly base rent of \$650 since July 1, 2003, and continues to do so. As a result, monthly base rent payments were Two Hundred and Fifty Dollars (\$250) lower than the TIYC obligations from July 1, 2005 through June 30, 2006 creating a delinquency of Three Thousand Dollars (\$3,000) for that period. Further, monthly base rent was not adjusted by the change in the CPI on July 1, 2006, as required by the terms of the First Amendment. Had the adjustment been made, monthly base rent would have increased to Nine Hundred and Thirty Five Dollars (\$935) (\$1.04 psf) per month, resulting in an additional delinquency of Two Thousand Eight Hundred and Fifty Three Dollars (\$2,853) for the period July 1, 2006 through April 30, 2007. Therefore, base rent outstanding as of April 30, 2007 was Five Thousand Eight Hundred and Fifty Three Dollars (\$5,853). Sublandlord has the right to impose penalties, consisting of Late Charges in the amount of Three Hundred and Fifty One Dollars (\$351), plus Default Interest in the amount of Five Hundred and Eighty Five Dollars (\$585), totaling Nine Hundred and Thirty Six Dollars (\$936). Consequently, the total owed by TIYC is of April 30, 2007 was Six Thousand Seven Hundred and Eighty Nine Dollars (\$6,789).

## **TIYC REQUEST**

TIYC acknowledges this obligation but requests that the Authority waive the obligation for rent arrearages incurred since July of 2003. TIYC states that at the time TIYC agreed to the terms of the Original Sublease and the terms of First Amendment, rent increases were based on the premise that rent increases would coincide with the redevelopment and expansion of the Marina. The development and expansion has yet to occur.

TIYC requests (i) an extension of the term of the Original Sublease through November 30, 2007, (ii) a waiver of outstanding obligations and reduction of monthly rent to \$650 plus a Common Area Maintenance charge, and (iii) that rent remain unchanged until development of the Marina.

The rent reduction is requested because TIYC is facing financial difficulty which it attributes to the fact that the Marina has not expanded as planned. According to TIYC, industry-wide yacht club membership and membership dues are directly related to the number of slips at adjacent marinas. The TIYC Business Plan was largely dependent on increasing the number of slips through development of the Marina. The Marina has not been developed due to transfer delays; therefore, TIYC has not been able to generate sufficient membership hence revenues to support the club. The 2004 TIYC tax return indicates that 2004 revenue was \$23,750 against expenses of \$19,029 for net income of \$4,721. Tax returns have not been completed for 2005 and 2006. Uncompiled financial information for subsequent periods indicate similar financial hardship. TIYC has

submitted this request and seeks support of its long term plan to continue TIYC's 40 year tradition at Treasure Island.

## **MARKET COMPARISON**

Rent for the South Beach Yacht Club ("SBYC") is \$1.40 psf for "cold shell". The SBYC has made substantial improvements to the facility. The SBYC facilities are superior to the TIYC facilities as SBYC has food service, hot and cold running water and restrooms, amenities lacking at TIYC.

The TIYC premises were appraised by the firm of Carneghi-Blum and Partners, Inc. The review concluded that the highest and best use for the premises was as meeting and assembly space. According to the appraisers, the market rental rate range for assembly space is \$0.50 psf per month to \$0.85 psf per month. Application of this rental rate range to the 900 square foot Yacht Club indicates a range of \$450 to \$765 per month. The condition of the building indicated a rate in the upper end of the range, but not the highest rate in the range given the lack of running water and restroom facilities, say \$0.75 per square foot or Six Hundred Seventy Five Dollars (\$675) per month.

## **SUBTENANT STANDING**

Without the requested waivers, the Subtenant owes \$5,853 for delinquent base rent, plus \$936 for penalties for a total outstanding obligation of \$6,789. The Subtenant is compliant with all other terms and conditions of the Sublease including Use, Security Deposit and Proof of Insurance.

## **RECOMMENDATION**

TIYC provides a substantial benefit to the community. It is a gathering place for Treasure Island Marina tenants and supports the local boating community, including the Treasure Island Sailing Center in youth oriented activities. Project Staff requests Authority approval to enter into a new month to month Sublease with the Subtenant for the term May 1, 2007 through November 30, 2007. Monthly base rent for the premises would be set at \$675, with annual increases of two percent (2%), beginning December 1, 2008, plus a Common Area Maintenance Charge. Finally, Project Staff requests Authority approval to waive outstanding rental obligations of \$5,853 and penalties of \$936 for a waiver totaling \$6,789 for two reasons. First, an appraisal of the premises indicates that the fair market rent for the premises is closer to the current amount paid by the Subtenant \$0.72 psf, rather than \$1.04 psf required by the First Amendment. Second, rental adjustments described in the Original Sublease were predicated on the idea that the rental increases would coincide with Marina expansion. That expansion has been delayed and will continue to be delayed for at least an additional forty eight months. The delay has compromised the Subtenant's ability to generate sufficient membership revenue to pay the higher rent.

## **EXHIBIT**

EXHIBIT A - Sublease between the Treasure Island Development Authority and the Treasure Island Yacht Club as Subtenant.

EXHIBIT B – Resolution authorizing the Director of Island Operations to Waive Outstanding Rent and Penalties and to Execute a Sublease with the Treasure Island Yacht Club for Building 298 for a Term beginning on May 1, 2007 and continuing on a month to month basis through November 30, 2007.

Prepared by Marc McDonald, Facilities Manager

For Mirian Saez, Director of Island Operations

1 [Treasure Island Yacht Club Waiver of Delinquent Rent and New Sublease]

2 **Resolution Authorizing the Director of Island Operations to Waive Outstanding Rent**  
3 **and Penalties and to Execute a Sublease with the Treasure Island Yacht Club for**  
4 **Building 298 for a Term Beginning on May 1, 2007 and Continuing On A Month-To-**  
5 **Month Basis through November 30, 2007.**

6 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
7 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
8 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
9 as a redevelopment agency under California redevelopment law with authority over former  
10 Naval Station Treasure Island (the "Base"), and (ii) with respect to those portions of the Base  
11 which are subject to the public trust for commerce, navigation and fisheries (the "Tidelands  
12 Trust"), vested in the Authority the authority to administer the Tidelands Trust as to such  
13 property; and,

14 WHEREAS, The Board of Supervisors approved the designation of the Authority as a  
15 redevelopment agency with the powers over Treasure Island in Resolution No. 43-98, dated  
16 February 6, 1988; and,

17 WHEREAS, the Tidelands Trust prohibits the sale of trust property into private  
18 ownership, generally requires that Tidelands Trust property be accessible to the public and  
19 encourages public-oriented uses of trust property that, among other things, attracts people to  
20 the waterfront, promotes public recreations, protects habitat and preserves open space; and,

21 WHEREAS, At the September 13, 2000 meeting, the Authority approved and  
22 authorized the Executive Director to enter into sole source negotiations with the Treasure  
23 Island Yacht Club ("TIYC") for an interim sublease ("Original Sublease") of Building 298 and in  
24 May 2001, the Authority approved the Original Sublease which included five (5) options to  
25 extend the term for one year each; and,

1 WHEREAS, Section 4.1 of the Original Sublease established the monthly Base Rent  
2 for the 900 square foot Premises to be in the amount of Four Hundred Fifty Dollars (\$450) for  
3 the initial one year term of the Sublease and increased the monthly Base Rent to Six Hundred  
4 Fifty Dollars (\$650) for the first extension of the term, and increased the monthly Base Rent to  
5 Nine Hundred Fifty Dollars (\$950) for the second extension and increased the monthly Base  
6 Rent to One Thousand One Hundred and Twenty Five Dollars (\$1,125) for the third extension;  
7 and,

8 WHEREAS, At a Special Meeting on August 27, 2003, the Authority, in response to a  
9 request from the TIYC Officers to restructure monthly Base Rent, amended the Original  
10 Sublease (the "First Amendment) to reduce the monthly Base Rent from Nine Hundred Fifty  
11 Dollars (\$950) to Six Hundred and Fifty Dollars (\$650), beginning July 1, 2003, to increase  
12 monthly Base Rent to Nine Hundred Dollars (\$900) on July 1, 2005, and to adjust monthly  
13 Base Rent by an amount equal to the change in the consumer price index on July 1, 2006;  
14 and,

15 WHEREAS, TIYC has made monthly Base Rent payments in the amount of \$650 since  
16 July 1, 2003, but has failed to pay increases as required by the First Amendment; and,

17 WHEREAS, TIYC has stated that it is unable to pay increased monthly Base Rent of  
18 \$900 as required by the terms of the First Amendment; and,

19 WHEREAS, On April 30, 2007, the outstanding rental obligation of TIYC to the  
20 Authority was Five Thousand Eight Hundred and Fifty Three Dollars (\$5,853), plus  
21 delinquency penalties of Nine Hundred and Thirty Six Dollars (\$936), for a total outstanding  
22 obligation of Six Thousand Seven Hundred and Eighty Nine Dollars (\$6,789); and,

23 WHEREAS, TIYC asserts that the initial and continuing intent of TIYC in its agreements  
24 to pay escalations in monthly Base Rent was that such escalations would occur in tandem  
25 with development of the adjacent marina and that there has been no increase in the number

1 TIYC members who can contribute to rental increases through membership dues because the  
2 marina has not been expanded and developed in accord with the schedule initially anticipated;  
3 and,

4 WHEREAS, TIYC acknowledges and affirms the outstanding obligation but lacks the  
5 ability to pay the outstanding obligations as well as increases in rent; and,

6 WHEREAS, TIYC has requested that the Authority waive the outstanding obligation  
7 and not increase the rent above \$650; and,

8 WHEREAS, According to a rental rate appraisal of facilities on Treasure Island  
9 conducted by the appraisal firm Carneghi/Blum and Associates, market rental rates for  
10 properties comparable to the building used by TIYC would range from \$0.50 to \$0.85 psf per  
11 month; and,

12 WHEREAS, Project Staff recommends that the rental rate for the property be set at  
13 \$0.75 psf (Six Hundred and Seventy Five Dollars (\$675)) per month and that the obligations of  
14 TIYC to the Authority be described in accord with the terms and conditions of Authority's  
15 updated Sublease; and,

16 WHEREAS, The Authority recognizes that TIYC is a valuable asset to the Treasure  
17 Island community, the San Francisco boating community and the Treasure Island boating  
18 community; and,

19 WHEREAS, The Subtenant has complied with each and every other term and condition  
20 of the Sublease; Now, Therefore Be It

21 RESOLVED, That the Authority waives the outstanding rental obligation and penalties  
22 of TIYC under the Original Sublease in the amount of \$6,789; and, be it

23 FURTHER RESOLVED, That the Authority approves and authorizes the Director of  
24 Island Operations to execute a new Sublease with the Subtenant for a month to month term  
25 through November 30, 2007, in substantially the form attached as Exhibit A.

1  
2 CERTIFICATE OF SECRETARY

3 *I hereby certify that I am the duly elected and acting Secretary of the Treasure*  
4 *Island Development Authority, a California nonprofit public benefit corporation, and*  
5 *that the above Resolution was duly adopted and approved by the Board of Directors*  
6 *of the Authority at a properly noticed meeting on May 9, 2007*  
7

8 \_\_\_\_\_  
9 John Elberling  
Secretary  
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RECYCLED PAPER MADE FROM 100% RECYCLED CONSUMER CONTENT



**SUBLEASE**

**between**

**TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

**and**

**TREASURE ISLAND YACHT CLUB**

**as Subtenant**

**For the Sublease of**

**Building 298 at  
Treasure Island Naval Station  
San Francisco, California**

**May 1, 2007**

# TREASURE ISLAND SUBLEASE

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- EXHIBIT E – Utilities
- EXHIBIT F – TIHDI Work Force Hiring Plan

## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated May \_\_, 2007, is by and between the Treasure Island Development Authority, a California public benefit corporation ("Sublandlord"), and Treasure Island Yacht Club, a California nonprofit mutual benefit corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated September 4, 1998, as amended from time to time (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord certain real property located on Treasure Island Naval Station (the "Property"), as more particularly described in the Master Lease.

B. The Property includes Building 298 on Treasure Island as more particularly shown on the map attached hereto as Exhibit B (the "Premises").

C. Subtenant desires to sublet the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### **1. PREMISES**

1.1. **Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises.

#### **1.2. As Is Condition of Premises.**

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them ("Subtenant's Agents"), of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 1.2(c) below and the Joint Inspection Report referenced in Section 6

of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises ("Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below), (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use by Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 1.2(b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that any structures or improvements located on or about the Premises, may fail structurally and collapse.

## **2. COMPLIANCE WITH MASTER LEASE**

**2.1. Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein.

**2.2. Performance of Master Landlord's Obligations.** Sublandlord does not assume the obligations of Master Landlord under the Master Lease. With respect to work, services, repairs, restoration, the provision of utilities or HVAC services, or the performance of any other obligations required of Master Landlord under the Master Lease, Sublandlord's sole obligation with respect thereto shall be to request the same, on request in writing by Subtenant, and to use reasonable efforts to obtain the same from Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any such work, services, repairs, repainting, restoration, the provision of utilities or HVAC services, or the performance of any of Master Landlord's obligations under the Master Lease.

**2.3. Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

**2.4. Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

**2.5. Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

### 3. TERM

**3.1. Term of Sublease.** The term of this Sublease (the "Term") shall commence on May 1, 2007 (the "Commencement Date"), and continue on a month-to-month basis through November 30, 2007 (the "Expiration Date"), unless sooner terminated pursuant to the terms of this Sublease. Either Party may, in its sole discretion, terminate this Sublease by giving thirty (30) days prior written notice to the other Party.

**3.2. Effective Date.** This Sublease shall become effective on the date (the "Effective Date") upon the later of (i) the Parties' execution and delivery of this Sublease, (ii) Sublandlord's Board of Director's approval of this Sublease at a duly noticed meeting, or (iii) the Commencement Date.

### 4. RENT

**4.1. Base Rent.** Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord base rent in the amount of Six Hundred and Seventy Five Dollars (\$675) per month (the "Base Rent"). Base Rent shall be paid to Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

**4.2. Additional Charges.** In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes, common area maintenance charges, and other costs, impositions and expenses related to the Premises as provided in Section 5 hereof, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder, all utility charges, and any common area maintenance charge (the "CAM Charge") levied on the Premises (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

**4.3. Late Charge.** If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to

determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

**4.4. Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of the greater of the interest rate in effect that has been established by the Secretary of Treasury pursuant to Public Law, as described in Section 33 of the Master Lease, or ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

## **5. TAXES, ASSESSMENTS AND OTHER EXPENSES**

### **5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

**5.2. Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy.

operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, the CAM Charge, and all property maintenance, including landscaping of parking areas and any other services necessary for Subtenant's use.

**5.3. Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

## **6. USE; COVENANTS TO PROTECT PREMISES**

**6.1. Subtenant's Permitted Use.** Subtenant may use the Premises as a meeting facility in support of the Subtenant's activities as a yacht club. Subtenant may conduct food and beverage service on the Premises in support of their meetings and activities, provided such service is in accordance with all applicable laws and the provisions of this Sublease. Subtenant shall not sublease or otherwise rent out the Premises to third parties for meetings or other activities without the prior written approval of Sublandlord, which approval Sublandlord may grant or withhold at Sublandlord's sole and absolute discretion. No sale of tobacco or tobacco related products shall be permitted. Subtenant may conduct food and beverage service, including alcohol beverage service as permitted under license from the California Alcoholic Beverage Commission on the Premises in support of their meetings and activities as a yacht club. Subtenant may not use the Premises, or any portion thereof, for any other purposes.

**6.2. Subtenant's Access to the Premises.** As provided in Section 30 of the Master Lease, Subtenant shall have access to the Premises on a 24-hours per day, seven days a week basis; provided, however, Subtenant shall coordinate such access with the local representative of Master Landlord.

**6.3. Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time.

**6.4. Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"); provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is

hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

**6.5. No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over Subtenant's use of the Premises in the event of any conflict; provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

**6.6. No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas on or about the Property outside of the Premises.

## **7. ALTERATIONS**

**7.1. Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications for any Alterations approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of construction on the Premises at all times.

**7.2. Historic Properties.** Without limiting the generality of the foregoing, Subtenant

acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to any improvements on the Premises (i) which will affect the historic characteristics of the improvements or modify the appearance of the exterior of the improvements without Master Landlord's and Sublandlord's prior written consent, or (ii) if such Alterations would preclude qualifying the improvements for inclusion on the National Register for Historic Places.

**7.3. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of this Section 7 shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.

**7.4. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment used upon or installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and shall be removed by Subtenant, subject to the provisions of Section 18 hereof. Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

**7.5. Sublandlord's Alterations.** Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the improvements on the Premises; provided, that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the purposes stated herein.

## 8. REPAIRS AND MAINTENANCE

**8.1. Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

**8.2. Utilities.** Sublandlord shall have no responsibility for providing any utilities and services to the Premises whatsoever. Subtenant shall be responsible for furnishing, at its sole cost, any utilities or services that Subtenant may need for its use of the Premises. Subtenant shall pay all amounts due and owing for such utilities and services directly to and at the rates charged by the providers of such utilities and services.

**8.3. Landscaping.** Subtenant shall maintain the exterior landscaping of the Premises in good condition and repair.

**8.4. Janitorial Services.** Subtenant shall provide all janitorial services for the Premises.

**8.5. Pest Control.** Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

**8.6. Trash.** Subtenant shall deposit all trash into designated containers in the Premises in compliance with the Rules and Regulations attached hereto as Exhibit F. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

**8.7. No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any

similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

## **9. LIENS**

**9.1. Liens.** Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

## **10. COMPLIANCE WITH LAWS**

**10.1. Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary; provided, however Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. and Title 24 of the California Code of Regulations, and all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

### **10.2. Regulatory Approvals.**

**(a) Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of any Alterations permitted hereunder may require authorizations,

approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation, any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") Sublandlord, City and Master Landlord, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties"), against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or to any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general liability, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

## **11. ENCUMBRANCES**

**11.1. Encumbrance By Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## **12. DAMAGE OR DESTRUCTION**

**12.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, fire, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in

Section 16 below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more than Ten Thousand Dollars (\$10,000) to repair, either party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by a casualty pursuant to which this Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, then Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

**12.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### **13. ASSIGNMENT AND SUBLETTING**

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, sublease or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises (a "Transfer"), without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion. Subtenant shall provide Sublandlord with a written notice of its intention to Transfer this Sublease or the Premises, together with a copy of the proposed Transfer agreement at least thirty (30) days prior to the commencement date of the proposed Transfer. Subtenant shall provide Sublandlord with such information regarding the proposed Transfer as Sublandlord may reasonably request.

### **14. DEFAULT; REMEDIES**

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Failure to Pay Rent.** Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within five (5) days after such sums are due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease; provided, Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time

thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## **15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION**

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused solely by the gross negligence or willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse

condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant, on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the Indemnified Parties' decision to Sublease the Premises to Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar

with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Subtenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

**15.2. Subtenant's Indemnity.** Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses arising out of Subtenant's use of the Premises, including but not limited to, any Losses arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises; (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises; and (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, in, on, or about the Premises or any Alterations, except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused solely by the gross negligence or intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

## **16. INSURANCE**

**16.1. Subtenant's Insurance.** Without in any way limiting Subtenant's liability pursuant to

Section 15 hereof, Subtenant shall procure and maintain throughout the Term of this Sublease the following insurance and pay the cost thereof:

- (a) Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.
- (b) Workers' compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than One Million Dollars (\$1,000,000) each accident. Notwithstanding the foregoing, Sublandlord's Risk Manager has waived this requirement for workers' compensation and employer's liability insurance so long as Subtenant does not have any employees.
- (c) Business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA 00 01 06 92. Notwithstanding the foregoing, Sublandlord's Risk Manager has waived this requirement for business automobile liability insurance so long as Subtenant does not use any automobiles in connection with its use of the Premises.
- (d) All risk property insurance insuring the Premises including, without limitation, any improvements, Alterations, furniture, fixtures and equipment located thereon, in an amount not less than Full Replacement Value of the Premises.

**16.2. General Requirements.** All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.

- (a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.
- (b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Subtenant as the insured and Sublandlord and the Master Landlord as additional insureds.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in Section 20.1.

**16.3. Proof of Insurance.** Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(a) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such certificates or policies, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.

**16.4. No Limitation on Indemnities.** Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

**16.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

**16.6. Subtenant's Personal Property.** Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

**16.7. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to

the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## **17. ACCESS BY SUBLANDLORD**

### **17.1. Access to Premises by Sublandlord.**

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

**17.2. Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## **18. SURRENDER**

**18.1. Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

**18.2. No Holding Over.** If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises. Subtenant shall have no right to hold over without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and absolute discretion. If Sublandlord holds over the Premises or any part thereof after expiration or earlier termination of this Sublease, such holding over shall be terminable upon written notice by Sublandlord, and the Base Rent shall be increased to two hundred percent (200%) of the Base Rent in effect immediately prior to such holding over, and such holdover shall otherwise be on all the other terms and conditions of this Sublease. This Section shall not be construed as Sublandlord's permission for Subtenant to hold over. Acceptance of any holdover Base Rent by Sublandlord following expiration or termination of this Sublease shall not constitute an extension or renewal of this Sublease.

**18.3. Security Deposit.** Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount of One Thousand Three Hundred and Fifty Dollars (\$1,350) as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately

replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 18.3, Sublandlord shall return such security deposit to Subtenant within forty-five (45) days of the termination of this Sublease.

## 19. HAZARDOUS MATERIALS

**19.1. No Hazardous Materials.** Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Sections 9601 et seq.), or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Subtenant agrees that it shall comply, without limiting the foregoing, with the provisions of Article 21 of the San Francisco Health Code including, without limitation, regarding obtaining and complying with the requirements of an approved hazardous materials

management plan, and with the requirements of the environmental protection provisions provided for in Section 13 of the Master Lease.

**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**19.3. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Subtenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials

located on the Premises as described in the EBS and the FOSL. In addition, California's Proposition 65, Health and Safety Code Section 25249.6 et seq., requires notice that some of these Hazardous Materials are known by the State of California to cause cancer or reproductive harm. By execution of this Sublease, Subtenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Sections 25249.6 et seq., 25359.7 and related statutes.

## 20. GENERAL PROVISIONS

**20.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord:      Treasure Island Development Authority  
Treasure Island Project Office  
410 Avenue of Palms  
Building 1, 2<sup>nd</sup> Floor  
Treasure Island  
San Francisco, CA 94130  
Attn: Director of Island Operations  
Fax No.: 415-274-0299

with a copy to:                              Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Fax No.: (415) 554-4755

Notice Address of Subtenant:  
Treasure Island Yacht Club  
66 Clipper Cove Way  
Treasure Island, San Francisco, Ca. 94130  
Attn: Commodore Reginald Smith  
Fax No.: (415) 434-4475

Notice Address of Master Landlord:

**DEPARTMENT OF THE NAVY  
BASE REALIGNMENT AND CLOSURE  
PROGRAM MANAGEMENT OFFICE WEST  
1455 FRAZEE ROAD, SUITE 900  
SAN DIEGO, CA 92108-4310**

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice.

**20.2. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment of Rent due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

**20.3. Amendments.** Neither this Sublease nor any term or provision hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**20.4. Authority.** If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosures set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**20.5. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities

under this Sublease imposed on Subtenant shall be joint and several.

**20.6. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**20.7. Successors and Assigns.** Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**20.8. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**20.9. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**20.10. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

**20.11. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

**20.12. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Sublease, reasonable fees of attorneys in the Office of the San Francisco City Attorney (Sublandlord's General Counsel) shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Further, for purposes of this Sublease, the term "attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. The term "attorney" shall have the same meaning as the term "counsel".

**20.13. Time of Essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**20.14. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**20.15. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the

other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

**20.16. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

**20.17. Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

**20.18. Non-Liability of Indemnified Parties' Officials, Employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Sublease.

**20.19. No Discrimination.** Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

**20.20. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20.21. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord.

## **21. SPECIAL PROVISIONS**

**21.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

**21.2. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

**21.3. TIHDI Job Broker.** Subtenant shall comply with the requirements of the TIHDI Work Force Hiring Plan attached hereto as Exhibit F.

**21.4. Local Hiring.** Subtenant further agrees to use good faith efforts to hire residents of the City and County of San Francisco at all levels of Subtenant's personnel needs and to contract with local businesses for Subtenant's purchase of supplies, materials, equipment or services.

**21.5. Non-Discrimination in City Contracts and Benefits Ordinance.**

(a) **Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) **Sub-Subleases and Other Subcontracts.** Subtenant shall include in all sub-subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) **Non-Discrimination in Benefits.** Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Sublease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees,

where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **HRC Form.** As a condition to this Sublease, Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Subtenant hereby represents that prior to execution of this Sublease, (i) Subtenant executed and submitted to the HRC Form HRC-128-101 with supporting documentation; and (ii) the HRC approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**21.6. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260, et seq.), except as otherwise specifically provided in this Sublease with respect to a condemnation of the Premises.

**21.7. MacBride Principles - Northern Ireland.** The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**21.8. Tropical Hardwood and Virgin Redwood Ban.** The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood

product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Section 802(b) and 803(b) of the San Francisco Environment Code, Subtenant shall not provide any items to the construction of tenant improvements or Alterations in the Premises, or otherwise in the performance of this Sublease, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**21.9. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**21.10. Wages and Working Conditions.** Subtenant agrees that any person performing labor in the construction of any tenant improvements and any Alterations to the Premises, which Subtenant provides under this Sublease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Subtenant shall include, in any contract for construction of such tenant improvements and Alterations, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord upon request, certified payroll reports with respect to all persons performing labor in the construction of such tenant improvement work or any Alterations to the Premises.

**21.11. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Sublandlord or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

**21.12. Pesticide Prohibition.** Subtenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit

the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Subtenant to submit to Sublandlord an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Subtenant may need to apply to the Premises during the terms of this Sublease, (b) describes the steps Subtenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as Subtenant's primary IPM contact person with the City. In addition, Subtenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

**21.13. First Source Hiring Ordinance.** The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after Sublandlord adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance. Subtenant shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

**21.14. Sunshine Ordinance.** In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City departments and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

**21.15. Conflicts of Interest.** Through its execution of this Sublease, Subtenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Subtenant becomes aware of any such fact during the Term of this Sublease, Subtenant shall immediately notify Sublandlord.

**21.16. Charter Provision.** This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

**21.17. Requiring Health Benefits for Covered Employees.** Unless exempt, Subtenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to

time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Sublease as though fully set forth. The text of the HCAO is available on the web at [www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml](http://www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml). Capitalized terms used in this Section and not defined in this Sublease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Subtenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Subtenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Subtenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (a) above.

(c) Subtenant's failure to comply with the HCAO shall constitute a material breach of this Sublease. Sublandlord shall notify Subtenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Sublease for violating the HCAO, Subtenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Subtenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Sublandlord shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Sublandlord.

(d) Any Subcontract entered into by Subtenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Subtenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Subtenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Sublandlord may pursue the remedies set forth in this Section against Subtenant based on the Subcontractor's failure to comply, provided that Sublandlord has first provided Subtenant with notice and an opportunity to obtain a cure of the violation.

(e) Subtenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Sublandlord with regard to Subtenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Subtenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

- (g) Subtenant shall keep itself informed of the current requirements of the HCAO.
- (h) Subtenant shall provide reports to Sublandlord in accordance with any reporting standards promulgated by Sublandlord under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- (i) Subtenant shall provide Sublandlord with access to records pertaining to compliance with the HCAO after receiving a written request from Sublandlord to do so and being provided at least five (5) business days to respond.
- (j) Sublandlord may conduct random audits of Subtenant to ascertain its compliance with HCAO. Subtenant agrees to cooperate with Sublandlord when it conducts such audits.
- (k) If Subtenant is exempt from the HCAO when this Sublease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Subtenant later enters into an agreement or agreements that cause Subtenant's aggregate amount of all agreements with Sublandlord to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Subtenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

**21.18. Notification of Limitations on Contributions.** Through its execution of this Sublease, Subtenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

**21.19. Preservative-Treated Wood Containing Arsenic.** As of July 1, 2003, Subtenant may not purchase preservative-treated wood products containing arsenic in the performance of this Sublease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a

preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Subtenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Subtenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**21.20. Resource Efficient City Buildings and Pilot Projects.** Subtenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Subtenant hereby agrees that it shall comply with all applicable provisions of such code sections.

**21.21. Food Service Waste Reduction.** Subtenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Sublease as though fully set forth. This provision is a material term of this Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Sublandlord will suffer actual damages that will be impractical or extremely difficult to determine; further, Subtenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Sublandlord will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Sublandlord because of Subtenant's failure to comply with this provision.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

**SUBTENANT:**

**Treasure Island Yacht Club ,**  
a California nonprofit mutual benefit  
corporation

**By: Reginald Smith** \_\_\_\_\_

**Its: Commodore** \_\_\_\_\_

**SUBLANDLORD:**

**Treasure Island Development Authority**

**By: Mirian Saez** \_\_\_\_\_

**Its: Director of Island Operations** \_\_\_\_\_

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA, City Attorney**

**By:** \_\_\_\_\_  
**Deputy City Attorney**

EXHIBIT A

MASTER LEASE

EXHIBIT B

DIAGRAM OF PREMISES

EXHIBIT C

COVER PAGE OF THE SEISMIC REPORT

EXHIBIT D

RULES AND REGULATIONS



EXHIBIT E

STANDARD UTILITIES AND SERVICES AND RATES



EXHIBIT F

WORKFORCE HIRING AGREEMENT







**AGENDA ITEM 13**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of May 9, 2007**

**Subject:** Resolution approving and authorizing the Director of Island Operations to execute the Use Permit with Salt River Construction for the Use of Two Barges  
*(Action Item)*

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

**BACKGROUND**

Salt River Construction (the "Permittee") is a dredge operator based in Sausalito. They transport rock, sand and gravel throughout the San Francisco Bay and the Delta. On May 1, 2006, they entered into a Use Permit with the Treasure Island Development Authority (the "Authority") for the use of two barges. Permittee seeks to enter into a new Use Permit with the Authority to continue to use the same two barges at a rate of Two Thousand Five Hundred (\$2,500) per barge per month for an additional period beginning June 1, 2007 and ending November 30, 2007.

The Authority performs its Base Caretaker duties on behalf of the United States Navy pursuant to the Base Caretaker Cooperative Agreement ("Agreement") as amended between United States Navy and the Authority. The Agreement was initially signed on March 12, 1997 and is updated annually. Under the Agreement, the Navy transferred to the Authority certain equipment and property. Among the property transferred to the Authority was four barges. These barges are leased to barge operators pursuant to the terms and conditions of a Use Permit.

On May 1, 2006, Salt River Construction entered into a six month Use Permit with the Authority for the use of two barges: Vessels Number YC-699 and YC-756 at a rental fee of \$2,500 per month per barge. The term of the permits expired on October 31, 2006. The Permittee has remained in possession of the barges on a hold-over basis. The Permittee has been awarded contracts to transport materials between Pittsburg, Vallejo and the Port of San Francisco. In support of those contracts, the Permittee requests an agreement to continue use of the barges through November 30, 2007.

**FAIR MARKET VALUE**

At the request of the Permittee, on April 9, 2007, Lorne Gould, a Certified Marine Surveyor, performed an "on-hire survey" of the two barges. The Surveyor provided a detailed description of the barges, noting damages, buckles and dents throughout.

With respect to Vessel YC 756 the Surveyor concluded:

"In general, deck barge "YC 756" was found to be in satisfactory condition and suitable for service in San Francisco Bay.

In my opinion, the market value of deck barge "YC 756", in the condition found at the time of survey is approximately \$40,000. The replacement value, at today's construction costs, is approximately \$400,000."

The fair market value of Vessel YC 756 provided by the Surveyor is \$40,000 or equal to the fair market value assigned to the vessel by the US Navy in 1997.

With respect to Vessel YC 699 the Surveyor concluded:

"In general, deck barge "YC 699" was found to be in satisfactory condition and suitable for service in San Francisco Bay.

In my opinion, the market value of deck barge "YC 699", in the condition found at the time of survey is approximately \$80,000. The replacement value, at today's construction costs, is approximately \$400,000."

The fair market value of Vessel YC 699 provided by the Surveyor is \$80,000 or \$40,000 greater than the fair market value assigned to the vessel by the US Navy in 1997.

#### **STANDING AS TENANT**

Salt River Construction is current in all permit payments to the Authority. The Use is consistent with the terms of the Permit. Permittee is compliant with all insurance requirements of the Permit and required Security Deposit has been deposited with the Authority.

#### **RECOMMENDATION**

Approve the Use Permit between Salt River Construction and the Authority.

#### **EXHIBITS**

Use Permit between Salt River Construction and the Treasure Island Development Authority

Prepared by Marc McDonald, Facilities Manager  
For Mirian Saez, Director of Island Operations

1 [Resolution Authorizing Salt River Construction Use Permit]

2 **Resolution approving and authorizing the Director of Island Operations to execute the**  
3 **Use Permit with Salt River Construction for the use of two barges.**

4 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
5 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
6 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
7 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
8 conversion of former Naval Station Treasure Island (the "Base") for the public interest,  
9 convenience, welfare and common benefit of the inhabitants of the City and County of  
10 San Francisco; and,

11 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
12 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to  
13 Chapter 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the  
14 Authority as a redevelopment agency under California redevelopment law with authority over  
15 the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those  
16 portions of the Base which are subject to the Tidelands Trust, vested in the Authority the  
17 authority to administer the public trust for commerce, navigation and fisheries as to such  
18 property; and,

19 WHEREAS, The Board of Supervisors approved the designation of the Authority as a  
20 redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated  
21 February 6, 1998; and,

22 WHEREAS, On March 12, 1997, the Authority and the US Navy entered into the Base  
23 Caretaker Cooperative Agreement ("Cooperative Agreement") for the management and  
24 operation of the Base; and,  
25

1 WHEREAS, In accord with the terms and conditions of the Cooperative Agreement the  
2 US Navy has transferred to the Authority certain supplies and equipment, including certain  
3 barges with Vessel Numbers YC-699 and YC-756; and,

4 WHEREAS, On May 1, 2006, Salt River Construction ("Permittee") entered into a six  
5 month Use Permit with the Authority for the use of barges YC-699 and YC-756 at a rental fee  
6 of \$2,500 per month; and,

7 WHEREAS, The term of the permit expired on October 31, 2006 and the Permittee has  
8 remained in possession of the barges on a hold-over basis; and,

9 WHEREAS, The Permittee has been awarded contracts to transport materials between  
10 Pittsburg, Vallejo and the Port of San Francisco and in support of those contracts, the  
11 Permittee requests a new Use Permit to continue use of the barges on a month-to-month  
12 basis through November 30, 2007; and,

13 WHEREAS, The Permittee is current in all obligations to the Authority and Project Staff  
14 recommends the request of the Permittee for a new Use Permit be accepted; now, therefore,  
15 be it

16 RESOLVED, The Authority Board of Directors hereby approves and authorizes the  
17 Director of Island Operations to execute the Use Permit between Permittee and the Authority  
18 in substantially the form of agreement attached hereto as Exhibit A.

19 *////*

20 *////*

#### 21 CERTIFICATE OF SECRETARY

22 I hereby certify that I am the duly elected Secretary of the Treasure Island  
23 Development Authority, a California nonprofit public benefit corporation, and that the  
24 above Resolution was duly adopted and approved by the Board of Directors of the  
25 Authority at a properly noticed meeting on May 9, 2007.

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John Elberling, Secretary





RECYCLED PAPER MADE FROM 100% POST CONSUMER CONTENT



City and County of San Francisco  
TREASURE ISLAND DEVELOPMENT AUTHORITY  
410 Avenue of the Palms  
Building One Treasure Island  
San Francisco, California 94130

**USE PERMIT**  
**(Bare Boat Charter)**

THIS USE PERMIT (this "Permit") dated for reference purposes only as of \_\_\_\_\_, 2007, is made by and between SALT RIVER CONSTRUCTION (Lic. #570874-A), a California corporation, hereinafter referred to as "Permittee," and the Treasure Island Development Authority, a public body, corporate and politic, hereinafter referred to as "Authority," acting by and through its Director of Island Operations or the Director's designated agent, hereinafter referred to as "Director."

RECITALS

WHEREAS, Authority has custody of those certain Vessels described in Requisition and Invoice document dated April 15, 1997 (Form 1149) hereto attached as Exhibit A; and

WHEREAS, Permittee seeks to charter the Vessels for the purposes stated herein, subject to the terms and conditions of this Permit.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Authority and Permittee agree as follows:

1. **Right to Use Vessels.** Authority hereby confers a right to use and charter to Permittee, and Permittee hereby agrees to use and take on hire, two (2) Vessels, Number **YC – 699 and YC – 756**, beginning on May 10, 2007 for the limited purpose and subject to the terms, conditions and restrictions set forth in this Permit.
2. **Inspection of Vessels.** Permittee represents and warrants that Permittee has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Permittee's Agents") of the Vessels, their seaworthiness and the suitability of the Vessels for Permittee's intended use. Any existing damage to the Vessels identified during such inspection and investigation is set forth in Exhibit B attached hereto. Permittee is fully aware of the needs of its operations and has determined, based solely on its own inspection and investigation, that the Vessels are suitable for its operations and intended uses.
3. **As Is; Disclaimer of All Representations and Warranties.** Permittee acknowledges and agrees that the Vessels are being chartered and accepted in their "AS IS, WITH ALL

**FAULTS"** condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory Authority with jurisdiction over the Vessels, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties ("Laws") governing the use, occupancy, management, operation and possession of the Vessels. Without limiting the foregoing, this Permit is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Vessels, or any portion thereof, whether or not of record. Permittee acknowledges and agrees that neither Authority nor any of its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns ("Authority's Agents") have made, and Authority hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Vessels, (ii) the physical, mechanical, operational or environmental condition of the Vessels, (iii) the seaworthiness of the Vessels, (iv) the feasibility, cost or legality of Permittee's use of the Vessels, (v) the safety of the Vessels, whether for the use by Permittee or any other person, including Permittee's Agents or Permittee's clients, customers, vendors, invitees, guests, members, licensees, assignees or permittees ("Permittee's Invitees"), or (vi) any other matter whatsoever relating to the Vessels or their use, including, without limitation, any implied warranties of **MERCHANTABILITY** or **FITNESS FOR A PARTICULAR PURPOSE**.

4. **Use of Vessels.** Permittee shall use the Vessels for the sole purpose set forth in Exhibit C attached hereto.

5. **Restrictions on Use.** Permittee agrees that, by way of example only and without limitation, the following uses of the Vessels by Permittee, or any other person claiming by or through Permittee, are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

(a) **Hazardous Material.** Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as such terms are defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Vessels, or transported to or from the Vessels without the prior written consent of Authority or except as may be expressly set forth in Exhibit C hereto. Permittee shall immediately notify Authority when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Vessels. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to Authority and in accordance with all laws and regulations, return the Vessels to the condition immediately prior to the release. In connection therewith, Permittee shall afford Authority a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "**Hazardous Material**" means material that, because of its quantity, concentration

or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental Authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Vessels or are naturally occurring substances in the Vessels, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Vessels.

(b) Waste or Nuisances. Permittee shall not conduct any activities on or about the Vessels that constitute waste or nuisance.

(c) Damage. Permittee shall not do anything about any Vessel that could cause damage to any Vessel or any other Authority property.

(d) Advertising or Promotional Activities. Permittee shall not conduct or allow to be conducted any advertising, marketing or promotional activities on any portion of the Vessels, unless expressly described in Exhibit C hereto or unless Permittee first obtains Authority's prior written consent, which Authority may give or withhold in its sole and absolute discretion.

6. Alterations. Permittee shall not make any modifications, alterations or additions to all or any portion of the Vessels, unless Permittee first obtains Authority's prior written consent, which Authority may give or withhold in its sole and absolute discretion.

7. Permit Fees; Liquidated Damages for Failure to Surrender as Required. Permittee shall pay to Authority a permit fee in the amount of Two Thousand Five Hundred Dollars and No Cents (\$2,500.00) per month, per vessel for the term of the permit as set forth in Section 8 below. Permit fees shall be paid to the Authority without prior demand and without any deduction, setoff, or counterclaim whatsoever. Permit Fees shall be payable on or before the first day of each month, in advance, at the Notice Address of the Authority provided in Section 21. If the term of this Permit commences or terminates on a day other than the first or last day of a month, then the Permit Fees for such partial month shall be prorated on the basis of a thirty (30) day month. Should Permittee fail to surrender any Vessel as required hereunder at the time and date set forth in Section 8 below, then Authority will suffer actual damages that will be impractical or extremely difficult to determine. In such event, Permittee shall pay to Authority upon demand an amount equal to the sum of Fifteen Thousand Dollars (\$15,000.00) per Vessel for each 30-day period after such date and time until the Vessel is surrendered as required hereunder. Authority and Permittee acknowledge and agree that

such amount is not a penalty, but is a reasonable estimate of the losses that Authority will incur based on such failure to surrender any Vessel as required hereunder.

(a) **Late Charge.** If Permittee fails to pay any Rent or fees within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by the Authority and Permittee, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that the Authority will incur as a result of any such failure by Permittee, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate the Authority for its damages resulting from such failure to pay and Permittee shall promptly pay such charge to Authority together with such unpaid amount.

(b) **Default Interest.** Of any Rent or fee is not paid within thirty (30) days following the due date, such unpaid amount shall bear interest from such date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Permittee nor on any amounts on which late charges are paid by Permittee to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Permittee.

8. **Term of Permit.** The privilege conferred to Permittee pursuant to this Permit shall commence on June 1, 2007 and shall continue on a month-to-month basis not to exceed 11:59 p.m. on November 30, 2007, when this Permit shall automatically terminate if it has not previously been terminated. If custody of the vessels reverts back to the United States Government, or Form 1149 terminates for any reason whatsoever, this Permit shall automatically terminate.

9. **Compliance with Laws.** Permittee shall, at its sole expense, conduct and cause to be conducted all activities on the Vessels in a safe and reasonable manner and in compliance with all applicable laws, regulations, ordinances and orders of any governmental or other regulatory entity whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Vessels any and all business and other licenses, permits or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that Authority is entering into this Permit in its capacity as a property owner with a proprietary interest in the Vessels and not as a regulatory agency with police powers. In addition, Permittee understands and agrees that Authority is not in any way acting on behalf of the City and County of San Francisco (the "City") or the Port of San Francisco (the "Port"). Permittee further understands and agrees that no approval by Authority for purposes of this Permit shall be deemed to constitute approval of any federal, state, city or other local regulatory Authority with jurisdiction (including, without limitation, the City or the Port), and nothing herein shall limit Permittee's obligation to obtain all necessary regulatory approvals at Permittee's sole cost or limit in any way Authority's, the City's or the Port's exercise of their respective police powers. Without limiting the foregoing, before beginning any use of the Vessels, Permittee shall obtain any and all permits, licenses and approvals (collectively,

"approvals") of all regulatory agencies and other third parties that are required to commence and complete such use.

10. **Surrender.** Upon the expiration of this Permit, Permittee shall surrender the Vessels in the same condition as received, free from hazards and clear of all debris. Permittee shall not be responsible for ordinary wear and tear resulting from Permittee's reasonable, prudent and careful use of any Vessel in employment for which it is suited by design, age and condition upon delivery. Prior to surrender, Permittee shall remove all of its property from the Vessels permitted hereunder, and shall repair, at its cost, any damage to the Vessels caused by such removal. Should Authority determine that Permittee has failed to surrender any Vessel in the condition required hereunder, then (without limiting any other rights or remedies available to Authority), Authority shall have the right (but no obligation) to refuse redelivery of the Vessel unless, and until such time as, Permittee shall have fully cured, at its sole cost and expense, such failure to return the Vessel in the condition required hereunder, and, in any event, whether or not Authority has refused redelivery as permitted hereunder, Permittee shall be bound to make payments for the continued use of the Vessel in the manner and amounts set forth in Section 7 until such time as Permittee has fully cured such failure. Permittee's obligations under this Section shall survive any termination of this Permit.

11. **Indemnity.** Permittee shall indemnify, defend and hold harmless Authority and the City, and their respective officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("**Claims**"), arising directly or indirectly, out of or in connection with any Vessel or the use, control, operation or condition of each Vessel, for so long as such Vessel is chartered hereunder or remains within the actual or constructive possession and control of Permittee or Permittee's Agents. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit.

12. **Waiver of Claims.** Neither Authority nor City, or any of their respective commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Vessels or their use by Permittee or Permittee's Agents.

13. **No Assignment.** This Permit is personal to Permittee and neither this Permit nor any Vessel shall be assigned, conveyed, subchartered or otherwise transferred by Permittee under any circumstances without the prior written approval of the Director of the Authority. Any assignment, conveyance, subcharter or other transfer by Permittee without the prior written approval of the Director of the Authority shall be null and void, and Permittee shall remain responsible for all obligations under this permit.

14. **Liens.** Authority shall be the sole entity empowered to pledge the credit of any Vessel for any purpose. None of Permittee, Permittee's Agents, the master of any Vessel, any person having or claiming the right to manage, control or possess any Vessel or the master of any towing vessel, shall have the right, power or Authority to contract for, create, incur or suffer to be imposed upon any Vessel any lien or charge of any nature of kind whatsoever. Authority

shall have a maritime lien on all cargo, freight, subfreights and upon all equipment, tools, machinery or other property now or hereafter placed or carried upon any Vessel, to secure Permittee's full and strict performance of the terms of this Permit.

15. **MacBride Principles - Northern Ireland.** Authority and the City urge companies doing business in Northern Ireland to move toward resolving employment inequities and encourage them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* Authority and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of Authority and the City concerning doing business in Northern Ireland.

16. **Non-Discrimination.** Permittee shall not, in the operation and use of the Vessels, discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Permittee, in any of Permittee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Permittee.

17. **Tropical Hardwoods and Virgin Redwood.** Pursuant to S.F. Administrative Code §12I.5(b), the Authority and the City and County of San Francisco urge contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

18. **Insurance.**

Permittee shall procure and keep in effect at all times during the term of this permit, at Permittee's sole expense, insurance as follows:

(a) Protection and Indemnity insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, including coverage for injury or damage to other parties or their property, arising from the operation of any Vessels under this Permit, and including coverage for illness, injury or death of the master or members of the crew, with any deductible not to exceed \$10,000 each occurrence. Such insurance shall include coverage for Jones Act benefits and U.S. Longshore and Harbor Workers' Act benefits.

(b) Hull and Machinery insurance, in an amount not less than the current market value of each Vessel, currently set forth in Exhibit A attached hereto, including AUTHORITY as Named Insured and Loss Payee, as its interests may appear, with any deductible not to exceed Five Thousand Dollars (\$5,000) each occurrence.

(c) Water Pollution Liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence and any deductible not to exceed \$5,000 each occurrence.

All policies required hereunder shall provide for the following: (i) name as additional named insureds Authority and its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage to Authority.

Prior to the commencement date of this Permit, Permittee shall deliver to Authority certificates of insurance in form and with insurers satisfactory to Authority, evidencing the coverages required hereunder. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, Authority may terminate this Permit.

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of one (1) year beyond the Permit expiration, to the effect that, should any occurrences during the Permit term give rise to claims made after expiration of the Permit, such claims shall be covered by such claims-made policies.

Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

**19. General Provisions.** (a) This Permit may be amended or modified only by a writing signed by Authority and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (e) Time is of the essence. (f) This Permit shall be governed by California law. (g) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from

the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees shall include fees of the City Attorney's Office of the City, based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (h) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (i) Permittee may not record this Permit or any memorandum hereof. (j) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (k) Any sale or conveyance of the property burdened by this Permit by Authority shall automatically revoke this Permit.

**20. Security Deposit.** Permittee shall pay to the Authority upon execution of this Permit a security deposit in the amount of Ten Thousand Dollars (\$10,000.00) as security for the faithful performance of all terms, covenants and conditions of this Permit. Permittee agrees that the Authority may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to any of the Vessels caused by Permittee, its Agents or Invitees, or any failure of Permittee to perform any other terms, covenants or conditions contained in this Permit, without waiving any of the Authority's other rights and remedies hereunder or at Law or in equity. The Authority's obligations with respect to the security deposit are solely that of debtor and not trustee. The Authority shall not be required to keep the security deposit separate from its general funds, and Permittee shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Permittee's liability for the performance of any of its obligations under this Permit. To the extent it is not used by the Authority as provided herein, the Security Deposit shall be returned to Permittee within five (5) business days of the termination of this Permit.

21. Notices to the Parties

Unless otherwise indicated elsewhere in this Use Permit, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority and/or City:      Treasure Island Development Authority  
Attn: Mirian Saez, Director of Island Operations  
Treasure Island Building One  
410 Avenue of the Palms  
San Francisco, CA 94130  
Fax: 415/274-0660

To Contractor:                      Salt River Construction  
Attn: Rick Moseley, Vice President  
167 Trinidad Drive  
Tiburon, CA 94920  
Fax: 415-924-6248  
E-mail: [RickMosele@aol.com](mailto:RickMosele@aol.com)

Salt River Construction  
Attn: Tom Moseley, President  
167 Trinidad Drive  
Tiburon, CA. 94920  
Fax: 415-924-6248

**PERMITTEE:**

SALT RIVER CONSTRUCTION, a  
California corporation

By: \_\_\_\_\_  
Name: Rick Moseley  
Its: Vice President

By: \_\_\_\_\_  
Name: Tom Moseley  
Its: President

**TREASURE ISLAND DEVELOPMENT  
AUTHORITY**

By \_\_\_\_\_  
Mirian Saez, Director of Island Operations

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA**  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A**

**April 15, 1997 Requisition and Shipping Invoice Form 1149**

<b>Vessel Number</b>	<b>Estimated Current Market Value</b>
YC - 699	\$40,000.00
YC - 756	\$40,000.00

## EXHIBIT B

### INITIAL INSPECTION

Barge YC-699 Report

Barge YC-756 Report

Permittee accepts responsibility for damage to hopper walls. Permittee agrees to make repairs to hopper walls at its own expense and return the vessels to the Authority in "good" condition, ordinary wear and tear excepted.

Initial \_\_\_\_\_  
Rick Moseley  
Salt River Construction

Initial \_\_\_\_\_  
Mirian Saez, Director of Island Operations  
Treasure Island Development Authority

## EXHIBIT C

### PERMITTED USE OF VESSELS

Use of Vessels by Permittee shall consist of the following:

Use of Two (2) Vessels by Salt River Construction, Tiburon, for the sole purpose of transporting materials such as clean fill, sand, gravel and crushed rock throughout the San Francisco Bay and Delta waterways.

Primary load sites shall be

1. Pier 96, San Francisco, California.
2. The vicinity of Arcy Lane, Pittsburg, California.
3. The vicinity of Sears Point Road, Vallejo, California.
4. The vicinity of Railroad Avenue and K Street, Vallejo, California.







1 [Establishing an Ad Hoc Nominating Committee.]

2  
3 **Resolution Establishing an Ad Hoc Nominating Committee, Consisting of Three**  
4 **Members of the Treasure Island Development Authority ("TIDA") Board of Directors**  
5 **Appointed by the President, to Nominate Members of the TIDA Board to Serve as**  
6 **Officers of the TIDA Board in Accordance With the TIDA Bylaws.**  
7

8 WHEREAS, Under the TIDA Bylaws, officers of the TIDA Board of Directors (the  
9 "Board") are to be chosen annually; and,

10 WHEREAS, The TIDA Bylaws allow the Board to create one or more committees  
11 consisting of two or more Directors to serve at the pleasure of the Board; and,

12 WHEREAS, The Board wishes to establish an ad hoc nominating committee to  
13 recommend for the Board's approval Directors to serve as officers of the Board for the next  
14 year; and,

15 WHEREAS, The Board wishes such ad hoc nominating committee to be comprised of  
16 three Directors appointed by the President of the Board; now, therefore, be it

17 RESOLVED, That the Board hereby establishes an ad hoc nominating committee to be  
18 comprised of three Directors appointed by the President of the Board; and, be it

19 FURTHER RESOLVED, That such nominating committee shall nominate Directors as  
20 candidates for the Board's consideration and election at a subsequent meeting of the Board,  
21 to serve as President, Vice President, Secretary, and Chief Financial Officer of the Board for  
22 the twelve (12) month period beginning July 1, 2007 and ending on June 30, 2008; and, be it

23 FURTHER RESOLVED, That the Board hereby urges any Directors who are interested  
24 in serving as an officer of the Board to submit their names to the Director of Island Operations  
25 for forwarding to the nominating committee for consideration; and, be it

1 FURTHER RESOLVED, That the Board recommends and urges the Director of Island  
2 Operations to work with the members of the ad hoc nominating committee to establish a  
3 meeting date, time, and place in accordance with the San Francisco Sunshine Ordinance and  
4 the Ralph M. Brown Act at which meeting the ad hoc nominating committee will determine by  
5 vote of the members of the ad hoc nominating committee which Directors to nominate as  
6 officers of the Board as described hereinabove; and be it

7 FURTHER RESOLVED, That upon the Board's election of officers in accordance with  
8 the TIDA Bylaws, the ad hoc nominating committee shall cease to exist.

9  
10 **CERTIFICATE OF SECRETARY**

11 **I hereby certify that I am the duly elected Secretary of the Treasure Island**  
12 **Development Authority, a California nonprofit public benefit corporation, and that the**  
13 **above Resolution was duly adopted and approved by the Board of Directors of the**  
14 **Authority at a properly noticed meeting on May 9, 2007.**

15  
16  
17 \_\_\_\_\_  
John Elberling, Secretary





**AGENDA ITEM 15**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of May 9, 2007**

**Subject:** Informational Presentation on New Interim Leasing Policy

**Contact** Mirian Saez, Director of Island Operations

**Phone** (415) 274-0660

**BACKGROUND**

Project Staff of the Treasure Island Development Authority generates operating revenue to support the policy goals and objectives of the City and the Treasure Island Development Authority by subleasing property that the Authority leases from the US Navy. Project Staff has initiated a review of the leasing policies and procedures employed by the Authority with the goal of maximizing income, streamlining the process, and ensuring transparency in the terms and conditions of all Authority transactions and agreements with third-parties.

Policy for subleasing on Treasure Island is subject to rules described in The "Treasure Island Development Authority Rules and Procedures for Transfer and Use of Real Property" (the "Rules and Procedures"). The Rules and Procedures (Exhibit A) were adopted as one of the first actions of the Authority. At the time they were adopted, the Authority was reviewing multi-year agreements affecting major elements of Island operations and development. Residential units were not available to the public. Proposals for residential property management were under review and there was discussion of whether the ultimate management agreement should incorporate an element for commercial property management. Staff was in the process of issuing a Request for Proposals ("RFP") for development and management of the Casa de la Vista for a term of five to fifteen years. In this context, the Rules and Procedures were appropriately developed for the purpose of subleasing property for long term use and entering into appropriate agreements for development of the property.

The Rules and Procedures were adopted by the Board on March 11, 1998, pursuant to Resolution No. 98-10-3/11. The multi-step process generally requires the Board to:

1. Adopt an initial resolution declaring its intent to transfer a parcel by lease or otherwise, and to approve a competitive solicitation process for such disposition;
2. Adopt a resolution accepting or rejecting the selection of a transferee before contract negotiations begin;

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3. Approving the transfer after a public inspection of a summary of the material terms and conditions of the transfer agreement negotiated between project staff and the transferee.

Exemptions from the policy are made for film studio subleases, month-to-month subleases, subleases with the Treasure Island Homeless Development Initiative, subleases with public agencies and emergency subleases. Exempt subleases can be negotiated without going through the process described above, but must be approved by a majority vote of the Board.

The Treasure Island subleasing environment has changed substantially since 1998. The Mayor's Office of Base Reuse (the "Mayor's Office") is in negotiations with a selected developer for transformation of the Base after transfer from the Navy, an event which the Mayor's Office anticipates taking place within the next 18 to 24 months. Longer term agreements for development and management of individual facilities are not being entertained, and the residential property manager's sublease and management agreement is now a month-to-month agreement. Due to anticipated reductions in housing revenue during this period, Project Staff seeks to maximize the subleasing opportunities for existing commercial assets in their current condition to generate immediate cash flow for the benefit of Treasure Island. In this context, Project Staff has engaged in a process to review the current subleasing policy with the goal of establishing a new policy that accounts for the unique demands of the limited market that seeks relatively low cost facilities for short-term uses.

Currently, Project Staff responds to the demands of the market by negotiating month-to-month subleases with prospective subtenants and presenting each proposed sublease and renewal to the Authority as an exempt sublease. The administrative burden of preparing a Staff Report, Resolution and Amendment on the small Project Staff is significant. Consequently, sublease discussions are not concluded until the agreements are approved by the Authority. This leads to delays in executing agreements. These delays have led prospective subtenants to secure opportunities elsewhere. Finally, the time and cost to review each new sublease and renewal and all of their related documents by the City Attorney has a significant impact on the project budget. Project Staff estimates the cost for the services of the City Attorney to review sublease packages exceeds \$100,000. This represents more than 20% of the Projected Gross Revenue Collections from non-residential subtenants in FY 06-07.

The current subleasing process is opportunistic, rather than measured. The result is the appearance of inconsistent marketing efforts, ad hoc negotiations of business terms and a documentation process that requires the Authority to react to opportunities instead of directing its limited resources to creating opportunities. In this environment the Authority is exposed to accusations that transactions are not being conducted openly. Additionally, Project Staff must devote limited resources to justifying business terms and marketing efforts. A leasing policy that provides advance approval of subleasing

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parameters, processes and major business terms will provide a transparent face to prospective subtenants and the public. The result will be assurance that subleasing is handled in a consistent manner that provides all prospective subtenants equal opportunity to compete for subleases on Treasure Island. A published leasing policy will contribute to streamlining the subleasing process by providing the Authority and Project Staff complete advance knowledge of business terms, thereby eliminating the need to produce follow up reports to justify transactions.

In an effort to maximize the revenue potential for the distressed properties under management, to streamline the subleasing process and to enhance the transparency of the process, Project Staff has initiated a review of the policies and procedures that affect commercial leasing on Treasure Island.

Project Staff initiated this review by completing a physical analysis of the assets under management. The objective was to develop an inventory of assets and to evaluate their suitability for subleasing. Project Staff presented its evaluation at the regular meeting of the Authority on January 10, 2007. Physical conditions affecting 84 buildings on Treasure Island were evaluated. The conclusion of Project Staff was that less than 30 of those buildings were suitable for subleasing to commercial tenants. The balance of the buildings were considered not suitable for subleasing either because they are occupied by a government organization, or the building suffers from defects too significant to qualify them as viable for subleasing (Exhibit B).

Project Staff then worked with the City's Real Estate Department ("DRE") to ascertain the revenue generating potential for the buildings that Project Staff considered suitable for subleasing. The goal was to establish a rental schedule that would provide Project Staff guidance in their negotiations with third parties while assuring that the Authority earns market rate rental revenue from properties it subleases. In support of this effort, DRE retained the services of Carneghi-Blum and Partners - an appraisal firm with significant experience with the City, to ascertain the fair market rental value of properties on Treasure Island. Information provided by the appraiser was used by Project Staff to establish a Minimum Rental Rate Schedule (Exhibit C) for viable rental assets.

Project Staff is now engaged in the final step of the process through a review of the policies that will establish the criteria for subleasing on Treasure Island. The objective is to develop a policy that standardizes and streamlines the leasing process to facilitate timely completion of transactions in a competitive environment while assuring that there is transparency and full disclosure to the Authority and the public. The goal is to develop a pre-approved body of subleasing parameters that will include a boilerplate sublease, use, business terms and minimum rental rates that will assist the Project Staff in sublease negotiations while assuring compliance with Board policy.

### SUBLEASING PARAMETERS

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- A. **Standard Form Sublease.** The Subtenant will sign a standard form sublease with no changes except for minor changes approved by the City Attorney. Any changes which significantly alter the responsibilities of the Authority or require liabilities greater than those described in the standard form sublease will require Authority approval.
- B. **Uses.** Uses of subleased properties shall be consistent with uses prescribed by the US Navy and Uses assigned by the Authority; or, in the case of a multiple tenant property, shall be similar to and/or compatible with the other uses in the property.
- C. **Business Terms.** The Business Terms of the sublease shall fall within the following general parameters:
- a. **Term.** The term of the sublease shall be no greater than the term provided the Authority in its lease with the US Navy.
  - b. **Legal Terms and Conditions.** The basic legal terms and conditions will be incorporated into the terms of a boilerplate sublease that will be drafted and approved by the City Attorney. Exceptions to the boilerplate terms and conditions will be approved by the City Attorney. Subleases and amendments to Subleases that are not signed "as to form" by the City Attorney will be invalid and not binding against either the Authority or the City and County of San Francisco.
  - c. **Risk Management.** The Risk Manager for the City and County of San Francisco will establish all Insurance Requirements for all Subleases. Exceptions to the standard Insurance Requirements shall be provided only by the Risk Manager and shall be in writing.
  - d. **Annual Rate Adjustments.** Each year, rental rates for current tenant will be adjusted between 2% and 5%, based on the change in the local Consumer Price Index, as well as general and local market conditions.
  - e. **Minimum Rents.** The sublease shall provide for minimum rents that shall be no lower than the rate for space of the category subleased, as shown on the **Minimum Rental Rate Schedule** (Exhibit C) adopted periodically by the Board.
  - f. **Security Deposit.** Each subtenant shall provide the Authority a Security Deposit that shall be equal to at least two times the monthly base rental payment. The Security Deposit may be greater based on a review of risk factors for a Subtenant.
  - g. The sublease may include **Concessions**.

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- i. **Early Entry.** The Subtenant may take early occupancy, up to a maximum of 30 days, to make substantial improvements to the property to prepare it for tenancy;
- ii. **Rent Credit.** Rent credits may be allowed to make improvements to the subleasehold. However, the value of Rent Credits cannot exceed 50% of Year One rent for space, as shown on the Rental Rate Schedule adopted by the Authority. Further, Rent Credits may be used to offset no more than 50% of the Subtenant's base rent for any month. *For example, a 500 square foot subtenant with a monthly rent of \$500 (\$1.00 psf) may be eligible for rental credits up to a maximum of \$3,000 (\$6.00 psf.) If those credits are applied over a twelve month period at a rate of \$250 (\$0.50 psf), then rent payable would be \$250 (\$0.50 psf) in months one through twelve and \$500 (\$1.00 psf) each month thereafter.*
- iii. **Paint and Carpet Allowance (Allowance)s.** The quoted rate for full service office space assumes move-in space with good paint and carpeting. In the event a subtenant takes office space that does not meet the standard, the Subtenant may be provided allowances for paint and carpet up to a maximum of \$2.00 per square foot to make cosmetic improvements to the premises. *For example, another 500 square foot subtenant with a monthly rent of \$500 (\$1.00 psf) per month may need to paint and carpet an office to bring it to good condition. The paint and carpet allowance of \$2.00 psf would provide the subtenant a paint and carpet budget of \$1,000. The \$1,000 budget could be credited against monthly base rent for the first four months of the subtenancy to reduce monthly rental payments in months one through four from \$500 per month to \$250 (\$0.50 psf) per month. Monthly rent would be \$500 (\$1.00 psf) each month thereafter.*
- iv. **Limitations to Rent Credit and Allowances.** Either Rent Credits or Allowances may be used to reduce monthly rental payments for a period that shall not exceed the twelve months. Subtenants shall not receive both Rent Credits and Allowances. In no event shall Rent Credits or Allowances be used to reduce monthly rental payments by an amount greater than 50% of the monthly base rent for the month. The value of Rent Credits or Allowances provided a Subtenant shall not exceed 50% of Year One base rent for the premises, as shown on the Rental Rate Schedule adopted by the Authority. Neither Rent Credits nor Allowances shall not be carried beyond twelve months.
- v. **Certification of Rent Credits and Paint and Carpet Allowances.** Plans and Descriptions of work and materials that may be eligible for Rent Credit or Allowances and the maximum potential value of Rent

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Credits or Allowances must be agreed upon and made a part of the terms of the Sublease. Rent Credits and Allowances will only become available after invoices for materials purchased and work performed have been certified by Project Staff as being a fair representation of work completed and work eligible for Rent Credits or Allowances have been certified as completed to the satisfaction of Project Staff. Neither Rent Credits nor Allowances will be available to the Subtenant to reduce monthly base rental payments prior to certification of satisfactory completion of work. Neither the estimated or actual value of work performed ("sweat-equity") nor materials supplied by the Subtenant ("self-help") shall be eligible for Rent Credit or Allowance.

**D. Subtenant Requirements.**

- a. The Subtenant will comply with all **permitting and regulatory** requirements of the Authority, the City and County of San Francisco, the US Navy and any other regulatory agency.
  - b. The Subtenant must meet the same standards of **creditworthiness** and other financial conditions as required for Subtenants receiving full Authority review.
- E. The Director of Island Operations shall present a written description at each monthly meeting of the Authority describing all leasing activity, including leases and renewals signed by the Director and the terms of those subleases and renewals (Exhibit D).

**RECOMMENDATION**

Project Staff seeks input of the proposed elements of a new interim leasing policy that is consistent with current subleasing activity on Treasure Island. This leasing policy would delegate to the Director of Island Operations the ability to negotiate and execute subleases consistent with policies established by the Board and report back to the Board the terms of subleases executed. The adoption of a new-interim leasing policy will enhance the ability of Project Staff to negotiate effectively in the current competitive environment. A leasing policy that streamlines the subleasing process will support Project Staff in meeting the demands of improving commercial revenue in Fiscal Year 2007-2008 while enhancing the transparency of the subleasing terms and conditions to all Authority transactions.

Prepared by Marc McDonald, Facilities Manager  
For Mirian Saez, Director of Island Operations



RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT



EXHIBIT A

TREASURE ISLAND DEVELOPMENT AUTHORITY  
RULES AND PROCEDURES FOR TRANSFER OF REAL PROPERTY

TREASURE ISLAND DEVELOPMENT AUTHORITY  
RULES AND PROCEDURES FOR TRANSFER AND USE OF REAL PROPERTY

I. INTRODUCTION

Section 1. Background. On May 2, 1997, the Board of Supervisors of the City and County of San Francisco (the "City") passed Resolution No. 244-97-003, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority"). The purpose of the Authority is to promote the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the former Naval Station Treasure Island (the "Base") for the public interest, convenience, welfare and common benefit of the inhabitants of the City.

Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property. The Board of Supervisors approved the designation of the Authority as a redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated February 6, 1998.

Under the Act and the Authority's Articles of Incorporation and Bylaws, the Authority, acting by and through

its Board of Directors (the "Board of Directors"), has the power, subject to applicable laws, to sell, lease, exchange, transfer, convey or otherwise grant an interest in or right to use or occupy ("Transfer") all or any portion of the real property located on the Base (a "Transfer Parcel").

Section 2. Purpose. These Rules and Procedures for Transfer of Property (the "Transfer Rules") establish the specific rules and procedures for the Transfer of any Transfer Parcel.

Section 3. Statement of Policy. All solicitations regarding Transfers by RFP or RFQ shall be conducted in a manner that provides maximum open and free competition consistent with this Transfer Policy. Such solicitation procedures shall not restrict or eliminate competition. Examples of what is considered restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) applying noncompetitive practices among firms; (3) organizational conflicts of interest; and (4) unnecessary experience, insurance and bonding requirements.

(a) Applicability of the Tideland Trust. The Authority hereby recognizes and acknowledges the applicability of the public trust for commerce, navigation and fisheries (the "Tidelands Trust") as to those portions of the Base which were once tide or submerged lands. Nothing in these Transfer Rules shall limit or otherwise modify the requirements of the Tidelands Trust insofar as it applies to the Base, including, without

limitation, the prohibition against conveying fee title to Trust property into private ownership.

## II. THE SELECTION PROCESS

Section 4. Conflict of Interest Prohibition. The Authority's officers, employees, Directors and agents shall follow all applicable financial disclosure and disqualification/Conflict of Interest provisions of the State Political Reform Act, Government Code Section 1090 and any other applicable law or regulation. No employee, officer, Director or agent of the Authority shall participate in selection or in the award or administration of an Authority contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, Director or agent, or any member of his or her immediate family, or those with whom any of the above referenced persons has, or intends to have, a business or employment relationship, has a financial or other interest in the firm selected for award or whose contract is to be administered.

Section 5. Initial Resolution. Except as provided in Section 10 below, before any Transfer, the Board of Directors shall adopt a resolution (an "Initial Resolution") at a meeting properly noticed and conducted under the applicable provisions of the Ralph M. Brown Act, Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, being Sections 54950 to 54962 thereof, and the San Francisco Sunshine Ordinance, Chapter 67 of the San Francisco Administrative Code (an "Open Meeting"), by a majority vote of all of its Directors

(or, if proceeding under Section 9 of these Transfer Rules, by a vote of not less than 4/5 of the Directors), declaring its intention to Transfer a specified Transfer Parcel. Any such Initial Resolution shall specify:

(a) the location and, if applicable, the corresponding building number, of the Transfer Parcel;

(b) whether the Transfer Parcel is available for sale, lease (and, if so, for what time period), and/or other means of Transfer;

(c) whether the Transfer will be made (1) following a proposal selection pursuant to a request for proposals according to the procedures set forth in Section 6 of these Transfer Rules, (2) following a Developer selection pursuant to a request for qualifications according to the procedures set forth in Section 7 of these Transfer Rules, (3) some combination of the procedures set forth in Sections 6 and 7 of these Transfer Rules, or, (4) in cases where the Authority makes sufficient findings that special circumstances exist under Section 6 of these Transfer Rules by direct, sole-source negotiations, pursuant to that Section 9;

(d) any other information required to be contained in the Initial Resolution pursuant to Sections 6, 7, or 9, as applicable; and

(e) such other information as the Authority deems appropriate to facilitate a Transfer in fulfillment of the goals of the Authority.

Section 6. Transfer pursuant to a Request for Proposals. If the Initial Resolution provides for a Transfer pursuant to a request for proposals, such Transfer shall take

place in accordance with the procedures set forth in this Section 6.

(a) Solicitation of Proposals. The Initial Resolution shall:

(1) approve a request for proposals or similar document in substantially final form (an "RFP") soliciting responses from qualified persons or entities to serve as a tenant, purchaser, and/or developer, as the case may be, (a "Developer") of a Transfer Parcel. Any RFP shall (i) require qualified proposals to describe, among other things, the rental or other consideration offered to the Authority, other principal business terms of the proposal, total projected revenues to the Authority, and the nature of any proposed improvements to the Transfer Parcel in a comprehensive business plan, (ii) contain general selection criteria for the ranking and selection of qualified proposals, and (iii) describe generally the permitted uses that may be made of the Transfer Parcel;

(2) establish procedures for dissemination of the RFP and information about the opportunity to serve as Developer of the Transfer Parcel; and

(3) establish a period of not less than thirty (30) days after issuance of the RFP to receive responses to the RFP (such period may be waived or modified in the Initial Resolution passed by a majority of the Board of Directors).

(b) Proposal Selection. The Executive Director of the Mayor's Treasure Island Project Office (the "Executive Director") shall implement the procedures set forth in the Initial Resolution to solicit proposals from qualified persons or entities to serve as a Developer of the Transfer Parcel. The Executive Director shall review all timely responses and shall

provide to the Authority an initial ranking of the responses to the RFP and a recommendation to (i) select one or more proposals based on the selection criteria described in the RFP, (ii) reject some or all responses or (iii) recommence the RFP process in whole or in part with any modifications to that solicitation process.

Following receipt of the Executive Director's recommendation, the Authority may adopt a resolution at an Open Meeting by a majority vote of its Board of Directors:

- (1) designating one or more selected proposals and authorizing execution of either exclusive or limited negotiating agreements, as the case may be, between the Authority and the selected Developer(s) setting forth the terms, conditions and time period for negotiations. During such negotiations, the selected Developer(s) and the Authority will, subject to all applicable laws, including any required environmental review, seek to reach mutually satisfactory agreement(s) for the Transfer consistent with the Developer's proposal (an "RFP Transfer Agreement");
  - (2) rejecting some or all responses and recommencing the solicitation process in whole or in part with any appropriate modifications to the Initial Resolution regarding the solicitation process;
  - (3) rejecting all responses and suspending efforts to Transfer the Transfer Parcel; or
  - (4) taking such other action as the Authority deems appropriate under the circumstances.
- (c) Approval of an RFP Transfer Agreement. After completion of the processes described in subsections 6(a) and (b)

above, and subject to all applicable laws, the Authority may approve a Transfer pursuant to an RFP Transfer Agreement.

Approval of an RFP Transfer Agreement shall be made by a resolution adopted at an Open Meeting by a majority vote of the Board of Directors (the "RFP Transfer Resolution"). Prior to such Open Meeting, the Executive Director shall make available for public inspection a summary of the material terms and conditions of the RFP Transfer Agreement.

The RFP Transfer Resolution shall authorize execution of the RFP Transfer Agreement by the Executive Director and shall contain findings that:

(1) the Transfer contemplated by the RFP Transfer Agreement will serve the goals of the Authority and is in the public interest of the City; and

(2) the terms and conditions of the RFP Transfer Agreement are economically reasonable.

Section 7. Transfer by Negotiated Transfer in connection with a Request for Qualifications. If the Initial Resolution provides for a Transfer pursuant to a request for qualifications, such Transfer shall take place in accordance with the procedures set forth in this Section 7.

(a) Solicitation of Qualified Developers. The Initial Resolution shall:

(1) approve a request for qualifications or similar document in substantially final form (an "RFQ") soliciting responses from qualified persons or entities to serve as the Developer of a Transfer Parcel. Any RFQ shall contain general selection criteria for the ranking and selection of a

Developer from among those persons or entities submitting qualified responses to the RFQ;

(2) establish procedures for dissemination of the RFQ and information about the opportunity to serve as Developer of the Transfer Parcel; and

(3) establish a period of not less than thirty (30) days after issuance of the RFQ to receive responses to the RFQ (such period may be waived or modified in the Initial Resolution passed by a majority of the Board of Directors).

(b) Developer Selection. The Executive Director shall implement the procedures set forth in the Initial Resolution to solicit qualified persons or entities to serve as a Developer of the Transfer Parcel. The Executive Director shall review all timely responses and shall provide to the Authority an initial ranking of the prospective Developers and a recommendation to the Authority to (i) select one or more Developers based on the selection criteria described in the RFQ, (ii) reject some or all responses or (iii) recommence the RFQ process in whole or in part with any modifications to that solicitation process.

Following receipt of the Executive Director's recommendation, the Authority may adopt a resolution at an Open Meeting by a majority vote of its Board of Directors:

(1) designating one or more selected Developer(s) and authorizing execution of either an exclusive or limited negotiating agreement, as the case may be, between the Authority and the selected Developer(s) setting forth the terms, conditions and time period for negotiations. During such negotiations, the selected Developer(s) and the Authority will, subject to applicable laws, including any required environmental

review, seek to reach a mutually satisfactory agreement for the Transfer (an "RFQ Transfer Agreement");

(2) rejecting some or all responses and recommencing the solicitation process in whole or in part with any appropriate modifications to the Initial Resolution regarding the solicitation process;

(3) rejecting all responses and suspending efforts to Transfer the Transfer Parcel; or

(4) taking such other action as the Authority deems appropriate under the circumstances.

(c) Approval of an RFQ Transfer Agreement. After completion of the processes described in subsections 7(a) and (b) above, and subject to all applicable laws, the Authority may approve a Transfer pursuant to an RFQ Transfer Agreement.

Approval of an RFQ Transfer Agreement shall be made by a resolution adopted at an Open Meeting by a majority vote of the Board of Directors (the "RFQ Transfer Resolution"). Prior to such Open Meeting, the Executive Director shall make available for public inspection a summary of the material terms and conditions of the RFQ Transfer Agreement.

The RFQ Transfer Resolution shall authorize execution of the RFQ Transfer Agreement by the Executive Director and shall contain findings that:

(1) the Transfer contemplated by the RFQ Transfer Agreement will serve the goals of the Authority and is in the public interest of the City; and

(2) the terms and conditions of the RFQ Transfer Agreement are economically reasonable.

Section 8. Guidelines For Selecting a Solicitation Procedure. The Executive Director shall determine the appropriate process to initiate the Transfer of a Transfer Parcel in accordance with these Transfer Rules. In determining whether to proceed with a Transfer pursuant to an RFP, an RFQ, or by the direct-sole source negotiations provided for in Section 9 below, the Executive Director shall consider (i) the range of generally acceptable uses that can be made of a particular Transfer Parcel, taking into account any current reuse, redevelopment or other land use plans adopted for the Base, and the requirements of any other applicable laws, including the public trust for commerce, navigation and fisheries and the California Environmental Quality Act, and (ii) whether, due to any special requirements or limitations regarding the use of or improvements to the Transfer Parcel, or for any other reason, only a limited number of potential persons or entities could successfully perform the duties and responsibilities of the Developer of such Transfer Parcel.

Section 9. Transfer by Direct Sole-Source Negotiations Under Special Circumstances. Notwithstanding any other provision of these Transfer Rules, the Authority may by resolution authorize the Executive Director to negotiate an agreement with one or more prospective Developers for the Transfer of a Transfer Parcel without prior announcement of the availability of the Transfer Parcel or any prior solicitation of other prospective Developers (a "Direct Transfer Agreement"), subject to the conditions provided in subsections 9(a) and (b) below.

(a) Super Majority Vote Required. A resolution authorizing a Transfer by the sole-source direct negotiations described in this Section 9 shall require the approval of 4/5 of the Board of Directors at an Open Meeting.

(b) Required Findings regarding Special Circumstances. A resolution authorizing a Transfer by the sole-source direct negotiations described in this Section 9 shall find, and shall state the Authority's basis for finding, for the Transfer Parcel in question, that:

(1) proceeding under this Section 9 is reasonably calculated to enable the Authority to realize additional Transfer proceeds and/or other identifiable public benefits; and

(2) the additional proceeds and/or other public benefit or benefits in question cannot be realized or are substantially less likely to be realized by the Transfer procedures authorized by Sections 6 or 7 of these Transfer Rules.

(c) Negotiating a Direct Transfer Agreement. Negotiations under this Section 9 may, but need not be on an exclusive basis and shall be consistent with any terms and conditions that the Authority may establish. The resolution shall provide for the Executive Director to report to the Authority concerning such negotiations.

(d) Approval of a Direct Transfer Agreement. After completion of the processes described in subsections 9(a) and (b) above and subject to all applicable laws, the Authority may approve a Transfer pursuant to a Direct Transfer Agreement. Approval of a Direct Transfer Agreement shall be by a resolution adopted at an Open Meeting by a majority vote of the Board of Directors (a "Direct Transfer Resolution"). Prior to such Open

Meeting, the Executive Director shall make available for public inspection a summary of the material proposed terms and conditions of the Direct Transfer Agreement.

The Direct Transfer Resolution shall authorize execution of the Direct Transfer Agreement by the Executive Director and shall contain findings that:

(1) the Transfer contemplated by the Direct Transfer Agreement will serve the goals of the Authority and is in the public interest of the City; and

(2) the terms and conditions of the Direct Transfer Agreement are economically reasonable.

Section 10. Exempt Leases.

(a) Types of Exempt Leases. Notwithstanding anything else contained in these Transfer Rules, the Authority may enter into the following types of leases, subleases, permits, memoranda of understanding or other similar agreements for the use and occupancy of real property located on the Base ("Leases") without prior announcement of the availability of the Transfer Parcel or any prior solicitation, including, without limitation, the requirement of an Initial Resolution ("Exempt Leases"):

(1) Film Studio Leases. Leases for film production activities in Building 2, 3 or 180 or Leases for exterior filming activities;

(2) Month-Month or shorter term Leases.  
Leases on a month-to-month or shorter term;

(3) TIHDI Leases. Leases with the Treasure Island Homeless Development Initiative ("TIHDI"), or a TIHDI member organization, in furtherance of any legally binding

agreements between TIHDI and the City or the Authority required under federal base closure laws;

(4) Leases with Public Agencies. Leases with the City, any public utility, the State of California (including, without limitation Caltrans) or the federal government, or any subdivisions thereof, for a public purpose; and

(5) Emergency Leases. Leases where the Board of Directors specifically finds in the Exempt Lease Resolution described in Section 10(b) below that it is necessary to enter into such Lease, without adopting an Initial Resolution, in order to respond to a health or safety emergency in a timely fashion, provided however, the scope of any Exempt Lease authorized under this Section 10(a)(5), including the term and the extent of permitted uses under any such Lease, shall be strictly limited to that which is necessary to respond to the immediate emergency conditions.

(b) Approval of Exempt leases. Except to the extent such authority may otherwise be delegated to the Executive Director, the Authority shall approve any Exempt Lease by a resolution adopted at an Open Meeting by a majority vote of the Board of Directors (an "Exempt Lease Resolution"). Prior to such Open Meeting, the Executive Director shall make available for public inspection a summary of the material proposed terms and conditions of the Exempt Lease.

The Exempt Lease Resolution shall authorize execution of the Exempt Lease by the Executive Director and shall contain findings that:

(1) entering into the Exempt Lease will serve the goals of the Authority and the public interests of the City; and

(2) as to an Exempt Lease described in subsections 10(a)(1) and (2) above only, the terms and conditions of the Exempt Lease are economically reasonable.

Section 8. Other Procedures. In addition to compliance with the procedures set forth in these Transfer Rules, the Authority shall comply with any other applicable provisions of law in disposing of property under its jurisdiction or control, including, to the extent applicable (i) the provisions of the California Environmental Quality Act (California Public Resources Code Section 2100 et seq.), (ii) the requirement of Section 5(f) of the Act that, prior to the Board of Supervisors approval of a redevelopment plan for the Base, any contract to which the Authority is a party worth more than one Million Dollars (\$1,000,000) or with a term of ten (10) or more years, shall require approval of the Board of Supervisors, (iii) any requirements regarding disposition of a Transfer Parcel set forth in any redevelopment plan approved by the Board of Supervisors, and (iv) the requirements of the public trust for commerce, navigation and fisheries, insofar as it applies to any Transfer Parcel.

Section 9. Amendment. These Transfer Rules may be amended by a resolution adopted by a majority of the Board of Directors of the Authority.

FILE NO. \_\_\_\_\_

RESOLUTION NO. 98-10-3/11

1 [Rules and Procedures for Transfer of Real Property]  
2 APPROVING AND ADOPTING CERTAIN RULES AND PROCEDURES GOVERNING THE  
3 TRANSFER OF REAL PROPERTY UNDER THE JURISDICTION AND CONTROL OF THE  
4 TREASURE ISLAND DEVELOPMENT AUTHORITY.

5 WHEREAS, On May 2, 1997, the Board of Supervisors passed  
6 Resolution No. 380-97, authorizing the Mayor's Treasure Island  
7 Project Office to establish a nonprofit public benefit corporation  
8 known as the Treasure Island Development Authority (the "Authority")  
9 to act as a single entity focused on the planning, redevelopment,  
10 reconstruction, rehabilitation, reuse and conversion of former Naval  
11 Station Treasure Island (the "Base") for the public interest,  
12 convenience, welfare and common benefit of the inhabitants of the  
13 City and County of San Francisco; and,

14 WHEREAS, Under the Treasure Island Conversion Act of 1997,  
15 which amended Section 33492.5 of the California Health and Safety  
16 Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968  
17 (the "Act"), the California legislature (i) designated the Authority  
18 as a redevelopment agency under California redevelopment law with  
19 authority over the Base upon approval of the City's Board of  
20 Supervisors, and, (ii) with respect to those portions of the Base  
21 which are subject to the Tidelands Trust, vested in the Authority the  
22 authority to administer the public trust for commerce, navigation and  
23 fisheries as to such property; and

24 WHEREAS, The Tidelands Trust prohibits the sale of trust  
25 property into private ownership, generally requires that Tidelands

1 Trust property be accessible to the public and encourages public-  
2 oriented uses of trust property that, among other things, attract  
3 people to the waterfront, promote public recreation, protect habitat  
4 and preserve open space; and

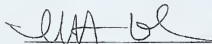
5 WHEREAS, Under the Act and the Authority's Articles of  
6 Incorporation and Bylaws, the Authority, acting by and through its  
7 Board of Directors (the "Board of Directors"), has the power, subject  
8 to applicable laws, to sell, lease, exchange, transfer, convey or  
9 otherwise grant an interest in or right to use or occupy ("Transfer")  
10 all or any portion of the real property located on the Base (a  
11 "Transfer Parcel"); and

12 WHEREAS, the Authority intends to promulgate and establish  
13 the Rules and Procedures for Transfer of Property attached to this  
14 Resolution as Exhibit A (the "Transfer Rules") as the specific rules  
15 and procedures for the Transfer of any Transfer Parcel by the  
16 Authority; now, therefore, be it

1           RESOLVED, That the Board of Directors of the Authority  
2 hereby adopts the Transfer Rules as the rules and procedures for the  
3 Transfer of any Transfer Parcel by the Authority.

4  
5                           CERTIFICATE OF SECRETARY

6           I hereby certify that I am the duly elected and acting Secretary of  
7 the Treasure Island Development Authority, a California nonprofit public  
8 benefit corporation, and that the above Resolution was duly adopted and  
9 approved by the Board of Directors of the Authority at a properly noticed  
10 meeting on March 11, 1998.

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12                             
13                           John Elberling, Secretary  
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# Buildings Suitable for Subleasing - 1

Effective January 1, 2007

<u>Building No.</u>	<u>Prior Use</u>	<u>Sq. Ft.</u>	<u>Potential Use</u>	<u>Condition</u>	<u>Current Tenants</u>	<u>Remaining Years</u>
Building 1	Administration Building	149,799	Office	Good	Administration	5 to 7 Years
Building 140	Nimitz Conference Center	24,169	Events Venue	Fair	None	5 to 7 Years
Building 146	Gate House	675	Retail	Good	Guards	5 to 7 Years
Building 227	Fog Watch	13,200	Events Venue	Poor	None	5 to 7 Years
Building 670	Brig	25,110		Good	None	5 to 7 Years
Building 671	Brig Carpentry Shop	1,200	Woodshop	Good	None	5 to 7 Years
Building 62	Building 62	35,611	Warehouse/Storage	Poor	W Wong Construction	5 to 7 Years
Building 201	Navy Exchange	88,354	Warehouse/Storage	Poor	John Stewart Co.	7 to 9 Years
Building 3	Building 3	144,767	Movie Production	Poor	None	7 to 9 Years
Building 258	Post Office	50,672	Office	Poor	None	9 to 11 Years
Building 330	Navy Exchange Gas Station	4,030	Storage	Poor	None	9 to 11 Years
Building 216	RV Storage	58,140	Covered Storage	Fair	SFPUC	9 to 11 Years
Building 69	Shed	2,468	Storage	Fair	None	9 to 11 Years

# Buildings Suitable for Subleasing - 2

Effective January 1, 2007

Building No.	Description	Address	Sq. Ft.	Use	Condition	Rent psf	Tenant	Remaining Years
Photo Shack	Building	Causeway	100	Gift Shop	Fair	\$5.15	SF Kanko	2 to 5 Years
Building 34	Commissary	725 California Ave	1,000	Club House	Good	\$1.00	Golden Gate Rugby	2 to 5 Years
Building 265	Library	TBD	8,392	Office	Fair	\$0.24	Glide Foundation	2 to 5 Years
Building 180	Building 180	200 California Ave	77,481	Storage	Good	\$0.20	California Logistics	5 to 7 Years
Building 183	Trailer	60 Clipper Cove	640	Café	Good	2% of gross	Delancey Street LLA	5 to 7 Years
Building 298	Yacht Club	TBD	1,188	Club House	Good	\$1.03	Yacht Club	5 to 7 Years
Building 2	Building 2	300 California Ave	138,661	Warehouse/Manufacturing	Good	\$0.15	Island Creative	7 to 9 Years
Bldg 502	Kidango	850 Avenue D	25,000	Daycare	Good	None	Kidango	7 to 9 Years
Building 402	Gymnasium	749 - 9th St	30,565	Gym	Good	Service	YMCA	9 to 11 Years





Exhibit C  
Minimum Rental Schedule

Building No.	Name	Highest and Best Use	Minimum Rental Rate psf
402	Gymnasium	Athletic	\$0.00
502	Kidango	Childcare	\$0.65
Field F		Filed	\$0.15
Field I		Field	\$0.05
Great Lawn		Field	\$0.05
Field H		Field	\$0.05
Field E		Field	\$0.05
Rugby		Field	\$0.05
California		Field	\$0.05
180	Building 180	Industrial	\$0.65
62	Building 62	Industrial - Occupied Portion	\$0.41
671	Carpentry Shop	Industrial	\$0.35
180	Building 180	Industrial	\$0.25
670	Brig	Industrial	\$0.25
216	RV Storage	Industrial	\$0.20
201	Navy Exchange	Industrial	\$0.20
69	Shed	Industrial	\$0.20
2	Hangar 2	Industrial	\$0.15
3	Hangar 3	Industrial	\$0.10
34	Commissary	Industrial	\$0.10
292	Warehouse	Industrial	\$0.10
62	Building 62	Industrial - Unoccupied Portion	\$0.10
330	Gas Station	Industrial	\$0.05
258	Post Office	Industrial	\$0.05
1	Administrative Building	Office	\$0.75
298	Yacht Club	Office - Commercial Assembly	\$0.50
265	Library	Office - Commercial Assembly	\$0.50
497	Ship Shape	Office - Commercial Assembly	\$0.50
229	Club House (Life Learning)	Office - Commercial Assembly	\$0.50
140	Nimitz Conference Center	Office - Commercial Assembly	\$0.25
227	Fog Watch	Office - Commercial Assembly	\$0.25
146	Gatehouse	Retail	\$1.25
Causeway	Photo Shack	Retail	\$1.25+
183	Café	Retail	\$1.25
34	Commissary	Rugby Club	\$0.25





RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT



Tenant Name  
Building No.  
Address

Treasure Island Development Authority  
Subleases Executed Pursuant to  
Leasing Policy

[illegible]







**AGENDA ITEM #16**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**May 9, 2007**

**Subject: Informational Presentation on a Request for Proposals to Market, Lease, and Operate Various Event Venues on Treasure Island**

**Staff Contact/Phone:** Mirian Saez,  
Director of Island Operations  
415-274-0660

**SUMMARY OF PROPOSED ACTION**

This informational presentation is for consideration to issue a Request for Proposals ("RFP") to Market, Lease, and Operate Various Event Venues on Treasure Island. This RFP will allow the Director of Island Operations to enter into one or more personal services contracts with qualified operators to market, lease, and operate event venues on Treasure Island.

**BACKGROUND**

The Treasure Island Development Authority ("TIDA") manages multiple event venues on Treasure Island that are available for rent. The venues include: the Administration Building, the Chapel, the Casa de la Vista, the Fogwatch, the Nimitz Conference Center, the Great Lawn, and Hangar 3.

For the past nine years, Treasure Island Project Staff has internally managed the promotion, rehabilitation, operation, and rental of the venues. The current model by which the venues are managed has proven to have created substantial awareness of the Treasure Island venues throughout the event industry. Project Staff has developed a rental policy for management of the venues which has successfully positioned Treasure Island, and more specifically Casa de la Vista, as an event destination.

As the plan and schedule for redevelopment of Treasure Island becomes more defined, the remaining lifespan of the venues as a source of revenue to TIDA has become more certain. Project Staff has determined that TIDA will benefit substantially if Project Staff's role shifts from direct management and operation of the venues toward asset management of the venues. Thus, an RFP will be designed to seek qualified operators with the expertise and potential to manage one or more venues.

The advantages of moving toward an asset management structure in this instance are threefold. First and primary is that this type of management will allow an operator with essential expertise to assist TIDA in accelerating the development and increased use of the venues, and therefore, accomplishing its objective to boost revenue. Second, the presence of an operator will relieve the burden on Project Staff by lifting many of the routine daily operational tasks from its purview, allowing Project Staff to focus on developing other models from which to derive revenue. Lastly, the advantage of having an operator manage some less frequently used buildings will increase a presence in these facilities, thus reducing the potential for vandalism, as well as provide the public with a

unique opportunity to access these facilities throughout their lifespan on Treasure Island.

Casa de la Vista has long been the source of the highest revenue generated from all of the venues. The need for an equal or superior revenue generating venue has become more apparent with the established phasing schedule for the redevelopment project. The first phase in the project, which is projected to take place in the next 4-6 years, will require the demolition of both Casa de la Vista and the Chapel. Thus, Project Staff recognizes the need to augment use of less popular venues, such as the Administration Building and the Great Lawn, as well as to renovate potential revenue generating venues that are currently unused, such as the Fogwatch and Nimitz Conference Center.

The Request For Proposals will identify the following four goals.

- A) Market the Venues: The Authority seeks to advertise and market the Venues so as to maximize use and increase revenue potential.
- B) Rehabilitation of Venues: The Authority seeks the rehabilitation of certain venues to create vibrant and active venues for weddings, parties, meetings, and other special events.
- C) Financial Objective: The Authority expects the venues to be marketed and rehabilitated, maintained and operated at no out of pocket cost to the Authority. In addition, the Authority seeks to maximize revenue from the venues and to participate in such revenues, as a percentage rate.
- D) Public Use: The Authority seeks to optimize public use and enjoyment of the venues. In particular, the Authority seeks to increase weekday use of Casa de la Vista, and to increase weekend use of the Administration Building, the Great Lawn, and Hangar 3.

The RFP will be issued with a broad scope to encourage a variety of proposals from a large number of potential operators. This will increase the possibility of achieving an outcome that allows TIDA to attain the four goals outlined above. The RFP will welcome proposals that suggest alternative uses of one or more venues, and will allow each respondent to creatively apply its particular expertise to one specific venue, rather than attempt to manage all the venues. By presenting an RFP in this broad manner, the potential for success is much greater than if the respondents are limited to a very specific scope.

The RFP will seek an operator with the expertise and experience to raise marketability of the venues on Treasure Island, to book more events in the venues, and to manage and operate the events as they take place on the Island. The types of operators that will be solicited are catering companies, event management companies, destination management companies, concert promoters, and other companies in the event industry that can undertake the operation and management of one or more venues in its current state and produce a product that becomes a revenue source on Treasure Island.

The RFP is currently in the early stages of development. Project Staff will consult with the City Attorney's Office and the General Services Agency for technical assistance and expertise on the process of issuing, managing, and awarding an RFP in the coming

weeks. Several departments in the City and County of San Francisco will review the draft RFP as it is revised into its final form. The target date of issuance is July 2, 2007. After the RFP is issued, a pre-submission conference and tour of venues will take place on August 1, 2007. Proposals will be required to be submitted on September 14, 2007, after which a review panel will analyze the responses and hear from the qualified respondents. The date on which the selected operator(s) will be determined is projected to be November 2, 2007.

While the current model for management of special events has consistently and successfully met the demand for event space on Treasure Island, the devotion, resources, and expertise necessary to dramatically elevate use, as well as develop, rehabilitate and operate seven venues cannot be carried out by the current Project Staff. Therefore, Project Staff proposes a new model, in the way of asset management, that will provide the opportunity for TIDA to improve rental occupancy rates, garner more substantial use of the existing resources and facilities, and increase much needed revenue.

Prepared by: Lori Mazzola, Event Coordinator  
For Mirian Saez, Director of Island Operations













## TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,  
BLDG ONE, 2<sup>ND</sup> FLOOR, TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0880 FAX (415) 274-0299  
WWW.SFGOV.ORG/TREASUREISLAND

DRAFT Minutes of Meeting  
Treasure Island Development Authority  
May 9, 2007

City Hall, Room 400  
1 Carlton B. Goodlett Place  
San Francisco, CA

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1. Call to Order: 1:41 PM

Roll Call Present: Claudine Cheng (Chair)  
Jared Blumenfeld  
John Elberling  
Matthew Franklin  
Marcia Rosen  
Owen Stephens

Excused: Jesse Blout  
Supervisor Chris Daly

2. Report by Director of Island Operations

Ms. Mirian Saez, Director of Island Operations, presented the Director's Report. Discussed progress on emergency preparedness efforts and development of a scope of work with OES for an emergency plan. Staff is selecting a consultant based on the OES pre-qualified list, discussions continue over the MOU between TIDA and PUC. Reported on budget issues including costs of transferring the 54 units to TIHDI and costs of Navy Site 12 remediation and unplanned expenditures, including relocation of the Navy water line and emergency vessel removal in Clipper Cove. Discussed Island operations issues including the CalTrans closing of the Bay Bridge over Labor Day Weekend, the pending readdressing of Treasure Island, approval by the Board of Supervisors of the Navy Cooperative Agreement and City Administrator MOU, recent meetings with housing providers to discuss a spike in burglaries and neighborhood safety, recent meeting with the Department of Public Health regarding commercial tenant responsibilities. Highlighted special events including the May 31<sup>st</sup> PriceWaterhouseCoopers Volunteer day, numerous proms, and filming in Building 3 by Beyond Productions. Discussed items to be brought before the Board at the June meeting.

3. Report by the Office of Base Reuse and Development

Mr. Jack Sylvan, Office of Base Reuse and Development, provided an update on the negotiations with the Navy. Revisions to both the Federal Property Guidelines and to the Development Plan in recent years has caused the Navy to ask for amendment to the Economic Development Conveyance application. Staff will discuss this application in more detail at a future meeting. Provided an update on State legislation involving the redevelopment project. SB 815 modifying the Treasure Island Trust Exchange passed the Senate and will be heard in the Assembly in the coming months. SB 163 transferring ownership of the Yerba Buena ramps passed the Senate Transportation Committee and will be heard next in Senate Appropriations Committee next. AB 1543 establishing the Transportation Management District is going to the Assembly Appropriations Committee. Staff also met with MTC and community stakeholders regarding this bill.

Director Cheng asked for an update on Disposition and Development Agreement (DDA) discussions with Treasure Island Community Development.

Ms. Sylvan stated the DDA is an ongoing process. There are initial issues that need clarification to guide these discussions, including wastewater treatment plant financing and a transition plan, which staff is working on.

Director Rosen asked for staff to provide the Board an updated version of the amended legislative language for Assembly Bill 1543.

#### **4. Communications**

There was no discussion of the Communications.

#### **5. Report by the Treasure Island/Yerba Buena Island Citizen Advisory Board**

There was no CAB report provided this month.

#### **6. Ongoing Business by Directors**

There was no ongoing business discussed.

#### **7. General Public Comment**

Mr. Marc Conners, Treasure Island Good Neighbors community group, discussed recent on-Island community events.

Ms. Ruth Gravanis spoke in support of Yerba Buena Island natural areas. Distributed a recent article about Yerba Buena Island.

#### **8. Consent Agenda**

There was no public comment on the Consent Agenda.

Director Rosen motioned for approval of the Consent Agenda.

Director Blout seconded the motion.

The entire Consent Agenda was approved unanimously.

## **9. Approval of Fiscal Year 2007-2008 Budget**

Director Saez presented the FY2007-2008 budget for approval. Discussed TIDA's roles and responsibilities as an agency with regards to the current interim reuse as well as the transfer and redevelopment of the former Base. Discussed TIDA's revenue sources, personnel expenses, administrative expenses and contractual obligations, and work orders to various City Departments. The budget for FY2007-2008 also includes approval of these various work orders with City departments. The liability to the PUC is not included in the expenses. Stated she has met with the Mayor's Budget Office and the General Services Agency to discuss this budget. Project staff anticipates increased commercial lease revenue after the approval of a new commercial leasing policy, and John Stewart Company is looking at ways to maximize the rental housing revenues.

Director Blumenfeld asked if the Department of Human Resources was consulted on the staff classifications. Asked if the revenue projections were conservative.

Ms. Saez stated that the general staffing grouping is general in order to provide for flexibility. Stated there will be alignment after performance evaluations and setting goals. Stated the revenue projections were conservative.

Director Franklin asked for clarification on the housing revenue shortfall.

Ms. Saez stated that there was a shortfall in the housing revenue based on keeping units off line in anticipation of the transfer of the 54 units to TIHDI, the loss of revenue based on the remediation efforts, as well as several unanticipated expenses that arose.

Mr. Ned York, John Stewart Company, stated that they are approximately \$1.2 million dollars short on their budget projections. The shortfall is due to the revenue lost from the 54 units being vacated for transfer to TIHDI and the money needed for capital improvements on these units prior turn-over to TIHDI, and the Navy soil remediation project which affected 35 rentable units.

Director Elberling asked if there was an expectation to spend additional money on capital repairs in future fiscal years on other facilities outside of Building 3.

Ms. Saez stated staff is looking at the Fogwatch Building potentially. Staff must understand the phasing plan for redevelopment and how that affects the commercial portfolio.

Director Elberling asked for the specific total for the residential refuse collection service.

Ms. Saez stated that for clarification the revised Exhibits A and D distributed at the meeting did not include any substantive changes, they were correcting clerical errors.

There was no public comment.

Director Rosen motioned for approval.

Director Stephens seconded the motion.

The Board approved the item with 5 ayes, 0 noes, and 1 abstention.

Ayes: Cheng, Elberling, Rosen, Stephens, Franklin.

Abstentions: Blumenfeld.

**14. Appointing of Members of Ad-Hoc Nominating Committee**

Director Cheng appointed Directors Blout, Stephens and Blumenfeld to the Ad-Hoc Nominating Committee. The committee will meet prior to the June 13<sup>th</sup> meeting to provide nominations to the full Board for officers for the coming year.

There was no public comment on this item.

**17. Update by San Francisco Police Department**

Captain Denis O'Leary, Southern Station, provided an update on Police Department activities on Treasure Island. Residents are responsive to Police Department suggestions as they relate to community and home safety, especially in keeping doors and windows secured. Arrests have been made in burglaries on the Island. The Police Department has been encouraged to use the Island for training. Stated there were seven Part One crimes in April, which is low considering the population on the Island. One response to crime on the Island is to increase communication between Southern Station and TIDA, such as notifying Director Saez of any incident which is being referred to an inspector for investigation. Also making efforts to alert the public as to how to communicate directly with the Police Department, either through 911 or the non-emergency phone number which is 553-0123. Stated that KFOG Ka-Boom is coming up soon and the Police Department will be dispatching extra officers to the Island for crowd-control purposes.

Director Elberling asked if car break-ins were common on the Islands.

Captain O'Leary stated that the crimes aimed at cars are personal, the suspect is known. There is not many car break-ins reported, part of this is due to the community responding to Police suggestions such as not leaving valuables in the car.

There was no Public Comment on this item.

Director Cheng left the Board at 2:30 PM.

**10. Sublease of area on Treasure Island to Bay Area Air Quality Management District**

Mr. Marc McDonald, Facilities Director, presented a sublease with the Bay Area Air Quality Management District. The BAAQMD would like to establish a monitoring system on Treasure Island to detect airborne contaminants which may be intentionally released as a hostile action against the United States. Similar BAAQMD stations are located throughout the Bay Area, and Treasure Island is considered a good location because of prevailing winds.

There was no public comment on this item.

Director Blumenfeld motioned for approval.

Director Rosen seconded the motion.

The item was approved unanimously.

**11. Sublease of Building 216 to Tri-California**

Mr. Marc McDonald, Facilities Director, presented a sublease with Tri-California for Building 216. Tri-California wishes to store materials related to the Triathlons they organize throughout

the Bay Area. Tri-California hosts the Treasure Island Triathlon and is known to be an upstanding organization.

There was no public comment on this item.

Director Blumenfeld motioned for approval.

Director Rosen seconded the motion.

The item was approved unanimously.

## **12. Extension of Sublease of Building 298 to Treasure Island Yacht Club**

Mr. Marc McDonald, Facilities Director, presented a sublease with the Treasure Island Yacht Club for Building 298. The Yacht Club has occupied Building 298 since 1991. The building has no running water or restroom facilities. Yacht Club rent has been paying \$650 per month since 2003 under a sublease which contemplated rent increases. However, the Yacht Club has felt that these rent increases were based on improvements to the marina which have not been made yet. The sublease called for rent adjustments in 2005 and 2006 which the Yacht Club has not paid. There are currently back rent and late penalties due. The Yacht Club has requested that rent be maintained at \$650 dollars until the marina is expanded. Due to the lack of modernization and new facilities, the Yacht Club has been unable to maintain a strong membership. The Yacht Club also requests that any rent increase in the future be tied to marina expansion rather than a fixed date.

Director Rosen asked what facilities were available for restrooms.

Mr. McDonald stated that the Yacht Club uses the Treasure Isle Marina's restrooms under an agreement between the two entities.

### *Public Comment*

Mr. Desmond Thorson, Treasure Island Yacht Club, spoke in support of the Yacht Club sublease. Discussed previous events and programs held at the Yacht Club which benefited the entire community.

Director Blumenfeld motioned for approval.

Director Franklin seconded the motion.

The item was approved unanimously.

## **13. Extension of Use Permit for YC Barges with Salt River Construction**

Mr. Marc McDonald, Facilities Director, presented a Use Permit with Salt River Construction for two YC Barges. The YC barges are Naval personal property which the Authority permits for revenue. The subtenant is compliant with all insurance and permit requirements.

There was no public comment on this item.

Director Blumenfeld motioned for approval.

Director Stephens seconded the motion.

The item was approved unanimously.

**15. Informational Item on Draft Commercial Leasing Policy**

Director Rosen stated that the President of the Board and another interested Director are absent at the current time. As the staff summaries are very explanatory, she would rather wait until next month to hear this item when the full Board is present. Stated it may not be productive with only a portion of the Board present and the presentation can be part of the action item next month.

Ms. Saez stated it is important to have the action item for this policy heard next month.

Director Rosen requested that the Board could provide to Ms. Saez any written comments they may have on the draft policy within the next two weeks. This item will then be brought before the Board, incorporating the Board's comments, for action at the next meeting.

There was no public comment on this item.

**16. Informational Item on Draft Events Venue Request for Proposals**

Director Rosen stated that the President of the Board and another interested Director are absent at the current time. As the staff summaries are very explanatory, she would rather wait until next month to hear this item when the full Board is present. Stated it may not be productive with only a portion of the Board present and the presentation can be part of the action item next month.

Ms. Saez stated it is important to have the action item for this policy heard next month.

Director Rosen requested that the Board could provide to Ms. Saez any written comments they may have on the draft policy within the next two weeks. This item will then be brought before the Board, incorporating the Board's comments, for action at the next meeting.

There was no public comment on this item.

**18. Discussion of Future Agenda Items by Directors**

There was no discussion during this item.

There was no public comment on this item.

**19. Adjourn**

Director Elberling motioned for adjournment.

The meeting adjourned at 3:07 PM.



TREASURE ISLAND DEVELOPMENT AUTHORITY  
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BLDG. ONE, 2<sup>ND</sup> FLOOR, TREASURE ISLAND  
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**TREASURE ISLAND DEVELOPMENT AUTHORITY  
MEETING AGENDA**

June 13, 2007 - 1:30 P.M.

Room 400, City Hall  
1 Dr. Carlton B. Goodlett Place

Gavin Newsom, Mayor

**DIRECTORS**

Claudine Cheng, *President*  
Jesse Blout  
Jared Blumenfeld  
John Elberling, *C.F.O./Secretary*

Matthew Franklin  
Marcia Rosen  
Owen Stephens  
Supervisor Chris Daly (*Ex-Officio*)

Mirian Saez, Director of Island Operations  
Peter Summerville, Commission Secretary

4:40 pm 20-4  
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**ORDER OF BUSINESS**

1. Call to Order and Roll Call
2. Report by Director of Island Operations (*Discussion Item*)  
*Length of Item: 10 minutes*
3. Report by Office of Base Reuse and Development (*Discussion Item*)  
*Length of Item: 10 minutes*
4. Communications (*Discussion Item*)  
*Length of Item: 5 minutes*
5. Report by the Treasure Island/Yerba Buena Island Citizen's Advisory Board (*Discussion Item*)  
*Length of Item: 5 minutes*

6. Ongoing Business by Directors (*Discussion Item*)  
*Length of Item: 5 minutes*
7. General Public Comment (*Discussion Item*) \*\*\*In addition to General Public Comment (Item #7), Public Comment will be held during each item on the agenda.\*\*\*  
*Length of Item: 10 minutes*
8. **CONSENT AGENDA**  
*Length of Item: 5 minutes*

*All matters listed hereunder constitute a Consent Agenda, are considered to be routine by the Treasure Island Development Authority Board and will be acted upon by a single vote of the Authority Board. There will be no separate discussion of these items unless a member of the Authority Board so requests, in which event the matter shall be removed from the Consent Agenda and considered as a separate item.*

- a.) Approving the Minutes of the May 9th, 2007 Regular Meeting (Action Item)
- b.) Resolution Approving and Authorizing the Director of Island Operations to Execute a Use Permit, including Waiver of Permit Fees, with Chicken Hooray, LLC, for the Use of the Parking Lot at Avenue of the Palms and California Avenue for the Purpose of Providing Fresh Rotisserie Chicken For Sale to Treasure Island Residents (Action Item)
- c.) Resolution Authorizing the Twenty Third Amendment to the Land and Structures Master Lease between the Authority and the Navy to Add Quarters 4,5,6,7,10,61,62,83,205,230 and 267 and Buildings 33A,B,C,D,E,F,G and H to the Leased Premises (Action Item)
- d.) Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with Toolworks, Inc., to Provide Janitorial Services Commencing July 1, 2007 and Expiring on June 30, 2008 (Action Item)
- e.) Resolution Approving and Adopting an Interim Subleasing Policy (Action Item)
- f.) Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with Rubicon Enterprises, Inc. to Provide Landscape Services Commencing July 1, 2007, and Expiring on June 30, 2008 (Action Item)
- g.) Resolution Authorizing the Director of Island Operations to Extend the Use Permit with Laura Bertone for Use of a Portion of Pier One Through November 30, 2007 and to Increase the Permit Fee Three Percent (Action Item)

9. Resolution Authorizing a Fifth Amendment to the Contract with CH2M Hill Terminating the Contract and Reconciling Amounts Due Thereunder (*Action Item*)  
*Presenter: Jack Sylvan, Office of Base Reuse and Development*  
*Length of Item: 5 minutes*
10. Informational Presentation by the Water Transit Authority (*Discussion Item*)  
*Presenter: Steven Castleberry, Executive Director, WTA*  
*Length of Item: 10 minutes*
11. Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with the Treasure Island Homeless Development Initiative for the Period from July 1, 2007 to June 30, 2008 (*Action Item*)  
*Presenter: Marc McDonald, Facilities Director*  
*Length of Item: 5 minutes*
12. Resolution Authorizing the Second Amendment to the Sublease between the Treasure Island Development Authority and the San Francisco Golden Gate Youth Rugby Club to Increase the Premises, Provide Tenant Improvement Credits, and Extend the Term on a Month-to-Month Basis through November 30, 2007 (*Action Item*)  
*Presenter: Marc McDonald, Facilities Director*  
*Length of Item: 10 minutes*
13. Informational Presentation on TIDA Volunteer Policy (*Discussion Item*)  
*Presenter: Marianne Thompson, Community Liaison*  
*Length of Item: 10 Minutes*
14. Election of Officers of the Treasure Island Development Authority (*Action Item*)  
*Length of Item: 5 minutes*
15. Discussion of Future Agenda Items by Directors (*Discussion Item*)  
*Length of Item: 5 minutes*
16. POSSIBLE CLOSED SESSION  
\*\*\*If approved by the TIDA Board, this Closed Session item will take place for approximately 45 minutes at the end of the meeting\*\*\*
  - a. Public Comment on all items relating to closed session
  - b. Vote on whether to hold closed session to confer with real property negotiators. (*Action item*)
  - c. CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
*Persons negotiating for the Authority: Michael Cohen, Jack Sylvan*  
*Persons negotiating with the Authority: Treasure Island Community Development, LLC, United States Navy*  
*Property: Former Naval Station Treasure Island*

*Under Negotiation:*

Price: \_\_\_\_\_ Terms of payment: \_\_\_\_\_ Both:  X

- d. Reconvene in open session (*Action item*)
  - i. Possible report on action taken in closed session under Agenda Item 16 (Government Code section 54957.1 (a) (1) and San Francisco Administrative Code Section 67.12)
  - ii. Vote to elect whether to disclose any or all discussions held in closed session (*San Francisco Administrative Code Section 67.12*).

17. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Development Authority Office, 410 Avenue of the Palms, Building 1, Treasure Island, and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

**Disability Access**

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Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Code 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, telephone (415) 581-2300, fax (415) 581-2317 and web site <http://www.sfgov.org/ethics/>.

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(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures

that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact: Administrator, Sunshine Ordinance Task Force. 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [sotf@sfgov.org](mailto:sotf@sfgov.org).

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the SOTF or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>











To: Mirian Saez, Director of Operations, TIDA

From: Ned York, Senior Director, JSCo

Date: May 30, 2007

**Subj.: Action Items: Expenditures In Connection with the Transfer of 54 Units**

The purpose of this memo is twofold: 1) to inform you of the anticipated costs for the scope of work in connection with the 54 units being transferred to TIDHI on July 1st, and 2) to seek your direction regarding any additional work with related costs which may be undertaken in preparation for the turnover. As of May 30<sup>th</sup>, there was \$781,132 in the Reserve for Replacement Account—the source from which we will be reimbursing the Operating Account for the expenditures. (Please bear in mind that the Villages deposits \$152,880 per year in the reserve account, and this account will also be used to pay for lead remediation work estimated at \$173,000 during 2007/8 and 2008/9.)

Paragraph K, 7. Unit Turnover, of the Revenue Sharing and Consent Agreement between TIDA and TIDHI states that units including building systems will be transferred with a “seven-year useful life for any such housing units.” For the past eight weeks, the Villages have been diligently making repairs to the interiors of the 54 units. Several weeks ago we conducted an initial walk-through of four units with representatives from CHP and Walden House to ensure that all parties were in agreement with the level of improvements we were making. Everyone seemed happy with the rehab and we have put together a schedule of upcoming meetings between now and the end of June with representatives of CHP and Walden House in order that the transfer be smooth and on time.

I have separated the costs below into two categories: a) those costs which everyone (JSCo and TIDHI) is in agreement that we spend the money to address because they are for systems which we would customarily make repairs when a unit is rehabbed; and, b) those costs which the Physical Needs Assessment that was commissioned by TIDHI identified as desirable to upgrade but are generally outside the scope of unit rehab items that the Villages would normally address. Please review all expenditures and approve/disapprove whichever ones you believe are appropriate for the Villages to spend its reserve account money on. Finally, please forward your determination to me.

**Anticipated Costs: Approximately \$285,000**

Unit Interior Rehab: \$125,000

At our last TIDA/Villages management meeting April 24, 2007 we discussed the scope of work involved in preparing the 54 units in eight buildings for transfer to TIDHI as well as the associated costs. At that time, I suggested that I would give you a projected cost for the interior upgrades based upon anticipated cost of one half of the units. I indicated that we were closely tracking the costs for the first 27 units being upgraded and that once I knew the extent of those costs I would multiple that number by two which would give us a realistic grasp of the total cost for the interior work for the 54 units. We have now completed the interior rehab of the first 27 units and are projecting the total interior costs to be approximately \$125,000.

**Recommendation:** *The Villages covers all of these items*

**TIDA:** Approve/ Disapprove

Backyard Fencing Upgrades: \$100,000 (Spent \$50,000 to date)

The Villages have identified 10 backyard fences that have broken posts which are in serious disrepair and needs to be upgraded. (The Physical Needs Assessment identified more than the eleven.) To date, we have corrected five with five fences left. Because the fence work involves disturbing the soil, the Villages will need to contract with a specialized contractor that does work in contaminated soil. The estimated cost per fence is \$10,000.

**Recommendation:** *The Villages pay for the remaining fence replacement. Since the posts are in disrepair there is no other way to address this condition. We believe that all fences should be repaired since they add a sense of security and privacy. If we don't make these repairs, we believe that the appearance of Treasure Island will look uneven and unappealing to prospective Villages residents.*

**TIDA:** Approve/Disapprove

Roof Replacement: \$60,000 (Spent \$60,275)

To date, the Villages have replaced three roofs (identified in the Physical Needs Assessment) which have resulted in a total cost of \$60,275. The three roofs were in poor condition and had begun to leak. The Villages commissioned a roof specialist to survey the remaining five buildings. In some cases, roofs were in poor condition and suggested their replacement.

**Recommendation:** *The Villages pay for the items.*

**TIDA:** Approve/Disapprove

**Additional Scope/Cost: +/- \$285,400**

Last spring, TIHDI hired a consultant who performed a Physical Needs Assessment of the 54 units which identified a comprehensive scope of work with an estimated cost of \$639,450. In the Spring, prior to making any improvements on the 54 units, the Villages performed its own survey with assistance from several professional

contractors to investigate the condition of some of the buildings' systems. Listed below are items which were included in the Physical Needs Assessment or were identified in the Villages' survey. Repairs for these items generally exceed what the Villages typically address.

**Tree Cutting: \$10,000**

The Physical Needs Assessment identified trees near two buildings (1216 Gate View and 1243 Northpoint) which were causing damage to concrete sidewalks because of root protrusion. While we agree that the tree at 1216 Gateview may need to be cut to the ground, we do not feel that the tree at 1243 Northpoint warrants attention. However, during our survey we also identified trees near 1118 Hutchins and 1223 Mariner as other potential problematic locations.

**Recommendation:** *The Villages recommends tree trimming at three locations and not tree cutting.*

**TIDA:** Approve/Disapprove

*W. H. 6/7/07*

**Parking Lot Repairs: \$28,500**

The Physical Needs Assessment recommends that the asphalt paving be repaired, sealed and striped where appropriate. The survey conducted by the Villages identified one location in poor condition and we solicited a bid of \$28,500 to correct the condition. Historically, the Villages has never repaved or resealed. However, we have done re-striping.

**Recommendation:** *The Villages recommends no action. If we were to make the repairs to the parking lots, it would call for the resealing and restriping of all parking areas, not just the location cited in the Physical Needs Assessment.*

**TIDA:** Approve/Disapprove

*No Action. W. H. 6/7/07*

**Sidewalks: \$15,000**

**Soil Excavation: \$30,000**

The Physical Needs Assessment identified three locations where roots are protruding into the concrete and causing heaving. The survey conducted by the Villages concurs that the concrete is in poor condition at the three addresses. If the Villages were to replace the existing sidewalks, it would entail the added expense of soil excavation which would be performed by an environmental remediation specialist. Historically, the Villages have not repaired any sidewalks.

**Recommendation:** *The Villages recommend that we put hazardous tape on the affected sidewalks which would warn pedestrians of the potential tripping and falling danger.*

**TIDA:** Approve/Disapprove.

*Concrete Asphalt or other product W. H. 6/7/07*

**Lighting: \$24,000**

While the Physical Needs Assessment deemed that the lighting fixtures are in acceptable condition, the consultant recommended that the fixtures should be updated to accept energy efficient fluorescent lighting. The Villages estimates that the in order to change all lighting fixtures the cost would be approximately \$24,000.

Historically, upon turnover, the Villages do not change the existing for fluorescent lighting.

**Recommendation:** We are not recommending this upgrade

**TIDA:** Approval/Disapproval

*Agreed. M. Sam 6/7/07  
Replacement. NO Action.*

**Boiler Replacement: \$80,000**

The Physical Needs Assessment called for replacing two heating boilers and one hot water heater. To date, the Villages has replaced two of the heating boilers. Beyond these two boilers, the Villages contracted with our heating consultant to survey the condition of the existing boilers and furnaces in all eight buildings. The consultant identified three boilers and two hot water heaters as recommended for replacement. Historically, the Villages have only replaced boilers and furnaces when they have broken down.

**Recommendation:** Last year, when representatives of JSCo met with representatives of TIHDI including CHP and Walden House, we discussed warranting the boilers, hot water heaters, and furnaces so that if any were in need of being replaced after the transfer the money for the upgrades would come from Reserve for Replacement Account held by the Villages. We believe this makes sense because boilers, hot water heaters and furnaces often function far beyond their designated useful life.

**TIDA:** Approve/Disapprove the warranting of these items

*M. Sam 6/7/07*

**Roof Replacement: \$97,900**

The Villages contracted with a roofing consultant to survey each of the roofs of the eight buildings. The consultant's report recommended that the Villages replace most of the roofs but we decided to replace only the three which had begun to leak. The cost for replacing the remaining five roofs is approximately \$100,000.

As with the boilers, hot water heaters and furnaces, the Villages is recommending that these systems be warranted.

**Recommendation:** The Villages warrant these roofs since they often last far beyond their "useful" life. If a roof fails after the 54 units are transferred, the Villages will replace the roofs by using reserve account funds.

**TIDA:** Approve/Disapprove the warranting of these items.

*M. Sam 6/7/07*

Please indicate which of the additional items you want the Villages to address. If you need more information, please let me know.

**PORT OF SAN FRANCISCO**  
**MEMORANDUM**

**To:** Mirian Saez  
Treasure Island Development Authority

**From:** Lawrence Brown

**Date:** 4 June 2007

**Re:** Financial Review of Treasure Island Grocery Store Development Proposal

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**Scope of Review**

Pursuant to your request, I have reviewed the business plans submitted by the Treasure Island Mini-mart (TIM), and the Treasure Island Cooperative (TICO) for the development of a grocery store on Treasure Island.

**Findings**

Both proposals are lacking important financial and other information needed to evaluate their viability. As a result, I recommend that the Treasure Island Development Authority (TIDA) defer making a decision on both proposals pending the receipt of further information. In order to adequately evaluate the proposals, I need, at a minimum, the following information.

**Additional Information Needed**

1. *Lease Proposal* - A lease proposal should be provided. The proposal should include the size of space to be leased (measured in terms of square footage), proposed lease term, and proposed rent. For the lease term the proposers should include the length of the base period, and the number and length of any lease extensions, if applicable. For rent they should break out the amount of base rent, and percentage rent, if any (including information on how percentage rent is calculated).
2. *Start-up Costs* - A determination and breakdown of all costs to be incurred during the start-up phase of the development with an estimate for the total time needed for the design, permitting and construction of the necessary leasehold improvements. At a minimum, start-up costs should include cost estimates for the following items: design, permitting and construction/or installation of the leasehold improvements (including all fixtures & equipment); pre-development costs; pre-opening labor cost including necessary training; pre-opening marketing & advertising; construction period rent, initial store stock and inventory, working capital; and initial general and administrative expenses.
3. *Financing Plan* - A plan for financing the start-up, and on-going costs is needed. The plan should clearly indicate the amount of equity, debt, grant or other financing being provided (or needed) for the development. Include evidence that the financing will be available. (In the case of debt financing such evidence could include commitment letters from lenders; or, at a minimum, an "expression of interest" letter.) For debt financing provide information on the loan term, interest rate, whether the interest rate is fixed or variable, and any other requirements of the loan, such as a balloon payment at the end of the loan term.
4. *Staffing Plan and Schedule* - A detailed staff schedule is needed that shows how the grocery store will be staffed during its normal hours of operation in terms of managers, cashiers, security personnel (if any), clerks, back office and/or other store employees. Include all of the hours that store personnel will be expected to work including time for set-up (before the store opens for business) and close out (after the

store closes for business). The staffing plan should also include the expected fixed salary or hourly wage rate, (as appropriate) for each category of staff employed. The plan should show the change in staffing through time (if any), and should encompass the entire period included in the requested financial projections (see below).

5. *Financial Projections* - Income statement/cash flow projections for the project for at least 10 years, or the base lease term, whichever is longer. The projections should clearly show projected annual revenues and expenses, and annual cash surpluses and/(or shortages). Funding any cash shortage should be addressed in the "financing plan". Please provide all assumptions used in deriving the forecast, including (but not limited to); calculation and/or description of how projected revenues were determined (for further specifics see below), assumed annual growth rate of revenues and various expenses, interest rates assumed for debt financing. Please provide justification for the assumptions used.

The projections should also include the following information: cost of goods sold, gross profit margin (gross profit/sales %), payroll (salary & benefits), sales & marketing costs, utilities, insurance expense, rent to TIDA, lease expense, depreciation, operating expense margin (operating profit/sales %), interest expense, taxes, and debt service (principal portion). The projected payroll expense should be derived from the proposed "staffing plan and schedule" (see above).

Information on how revenues were derived should include of the following: How large (in terms of people) is the assumed market for the grocery store? What are the different market segments (residents, TI workers, etc.), and how many are in each segment? How much of each market segment does the grocery store expect to "capture"? How many transactions are projected per week?

For residents of Treasure Island, or those who are expected to do most of these grocery shopping at the Treasure Island store; what is the expected weekly revenue per household? How was it determined? How many households are assumed?

For those shoppers who do most of their grocery shopping elsewhere, what is the expected average dollar size of each transaction? How many transactions are expected per week?

In addition to the above, I have the following proposal-specific comments:

#### *The Treasure Island Mini-mart proposal*

- *Staffing/Payroll* - The proposal indicated that the grocery store would operate 16 hours a day, 363 days a year, and that initial staffing could consist of 2 cashiers, a proprietor/managing partner and an assistant manager. In Section 6.3 (Personnel Plan) the proposal shows total payroll expenses of \$180,000; \$50,000 for the manager/partner, \$25,000 for the assistant manager, and \$105,000 for the employees. There do not appear to be enough managers to adequately staff the store. With a 16 hour day, the store will be open 112 hours a week; 17 hours a day, or 119 per week if you assume an additional hour per day for pre-opening and closing duties. It is not clear how these hours will be covered with just two managers on staff.

Regarding employee salaries, I calculated that employee wages (excluding benefits) would total \$106,170 annually, based on the current San Francisco minimum wage of \$9.14 per hour. This is greater than the \$105,000 assumed in the proposal.

The calculation is as follows:

$$16 \text{ hours/day} * 363 \text{ days/year} = 5,808 \text{ hours/year}$$

$$\$9.14/\text{hour} * 5,808 \text{ hours/year} * 2 \text{ cashiers} = \$106,170.24/\text{year}$$

- *Annual Revenues* - In Section 7.0 (Breakeven Analysis) a breakdown of the projected annual gross sales is provided. The breakdown indicates that that TIM assumes that 438 low income 4 person-households would spend \$499/month on food, and \$200/month on non-food items (using 2005 figures). Information from

the US Department of Agriculture (USDA) indicates that for 2005 the maximum food stamp benefit was \$499 for a 4 person-household; however the average monthly benefit was just \$93/person (or \$372/month for a 4 person household). In light of this, what justification was used to assume a monthly expenditure of \$499 for a 4 person-household.

Additionally, TIM assumed that 328 regular income families would spend \$857/month on food, and \$200/month on non-food items (for a total of \$1,057 month) using 2005 figures. TIM further indicated that the \$857 monthly expenditure on food represented a "59% increase adjustment from the national average for San Francisco". My research, however, indicated that the average annual amount spent for food at home in 2004-2005 was \$3,322 in the U.S. (national average), and \$3,909 in San Francisco. This corresponds to a monthly expenditure of \$276.83 for the U.S. and \$325.75 for San Francisco. This is significantly below that \$857 monthly food expenditure assumed in the proposal. It is also important to note that San Francisco spent just 8.5% more than the national average, as compared to the 59% more assumed in the proposal.

Finally, using information gathered from the Food Marketing Institute for 2007 (source: U.S. Grocery Shopper Trends, 2007) we noted that average weekly grocery expenditures for a household with children totaled \$117.60 (\$131.40 for households of 5 or more). The higher figure of \$131.40 per week corresponds to a monthly expenditure of \$569.40, or an assumed expenditure of \$617.80 for San Francisco using the 8.5% increase adjustment noted in the paragraph above. In light of the above facts, what justification was used to assume a monthly food expenditure of \$857, and \$1,057 total grocery expenditure for a 4 person-household.

### *The Treasure Island Cooperative proposal*

- *Operating and Net Profit Margin* - TICO states in their proposal that they have an after-cost operating margin objective of 18%, and that they expect to close out their first year of operation with net earnings in excess of 10%. Information from the Food Marketing Institute indicates that for 2006 net profits after taxes averaged only 1.46% of sales. In light of this, what justification was used to assume that net profits would exceed 10% in the first year of operation.



**Treasure Island Cooperative  
(TICO)**

**A Cooperative Grocery Store for Treasure Island and Yerba Buena Island**

**Business Plan**

**Presented By The San Francisco Islands Community  
Association**

**Martin Maher Co-chair  
Emily Rapaport Co-chair**



## *1. Executive Description*

The Treasure Island Coop (TICO) is a resident driven organization that aims at providing grocery services to island wide residents. Our products will be highly competitive in terms of both quality and price. For the past eight years, there have been no stores on Treasure Island to serve the 4,000 residents and employees who live and work on the island.

TICO has several objectives to be achieved within the first three years.

- Yearly gross sales of \$6.9 million
- After cost operating margin of 18%
- 100% resident staffing
- Full benefits for full-time staff

Treasure Island and Yerba Buena Island (TIYBI) has 3,000 full-time residents and no grocery store. This market is under served and ready for a customer-oriented, community grocery concern. There are many indicators that residents would avail themselves of the convenience and choice TICO will provide. We anticipate developing a loyal customer base through the proximity, products, and services that will be offered.

While there are many potential competitors in the city itself, by virtue of the Bay Bridge most are at least five miles from Treasure Island. This will contribute to TICO's distinct competitive edge.

### **1.1 Objectives**

1. Increase sales to more than \$7 million annually within three years.
2. Move gross margin to 20% and maintain at that level.
3. Add products and services to meet market demand.
4. Maintain a low cost of goods sold while increasing product quality.
5. Provide jobs for the TIYBI community that are rewarding and fulfilling.

## **1.2 Mission**

TIYBI residents have been without a full-service grocery store since the Navy decommissioned the Treasure Island Naval Base. TICO will endeavor to be an island-wide, resident-driven, full-service general grocery store serving TIBYI residents.

## **1.3 Keys to Success**

1. Delivering high quality products that set TICO apart from others in selection, quality and value.
2. Providing a necessary service that supports TIYBI residents.
3. Maintaining shrink at or below .5%.
4. Carrying products that satisfy customer demands.
5. Partnering with the training programs of Glide, Job Corps and Life Learning Academy for necessary renovations and minor construction of the planned TICO facility (former Navy Grocery Exchange).

## **2. Product Description**

## **2.1 Initial Products**

We will offer a full line of grocery products:

- Fresh meat, poultry and fish
- Fresh fruits and vegetables
- Frozen Foods
- Breakfast cereals
- Non-alcoholic beverages
- Baby food and supplies
- Pet food and supplies
- Snacks
- Emergency items
- Health and Beauty Care
- Household Goods

## **2.2 Future Products**

- Full-service deli
- Fresh-brewed coffee and teas
- Fountain drinks
- Local delivery service
- Bank-owned ATM

- Self-service copier
- Bottle and can recycling machines on premise

### *3. Competitive Comparison*

The data are not available for a competitive comparison.

### *4. Staffing Summary*

TICO anticipates having a staff of eight full-time employees and as many as three part-time employees.

#### **4.1 Management**

The management team will be comprised of TIYBI residents. The proposed initial management team has over 40 combined years of administrative, financial, and sales experience to guide them in the daily operation, and long-range planning necessary for the consistent and continued growth of TICO.

#### **Emily Rapaport – Store Manager**

She will directly oversee TICO'S sales and marketing, finance and administration

divisions.

Emily was responsible for the management and maintenance of a research facility at the University of California at San Francisco.

Concurrently she served as vice president of her local union, UPTE Local 9119. She oversaw four full-time employees and was responsible for directing the activities of over fifty volunteers.

She was also the Chair for the UPTE political action committee. She was the chief lobbyist for the local- and system-wide union, where she was responsible for the direction of three full-time staff and fifteen to twenty volunteers.

**She was also the system-wide liaison to CWA and other unions.**

#### **Martin Maher - Consultant Manager**

Martin is currently a full-time senior network security engineer.

He has seven years experience in grocery advertising and sales. He has also run a successful internet access service in an underserved rural market.

#### **Rebecca (Becky) Richardson - Assistant Manager**

Becky will primarily responsible for recordkeeping and shrink control. Becky will also lead the marketing and promotion of TICO to TIYBI residents.

### **4.1 Hourly**

Current plans are to bring additional staff on board in a paid capacity on or about February 2, 2006, and we have forecast those expenses.

We anticipate that the day-to-day operating staff levels each shift will consist of:

- Manager or Assistant Manager

- Two register clerks
- Two floor clerks
- One perishable clerk
- One security personnel

As goals are met, we will seek to hire a full-time person in charge of logistics. We are currently forecasting that this will occur in the third quarter of 2006. We anticipate hiring additional staff as the need arises.

#### **4.1 Organizational Structure**

TICO organizational plans call for sales and marketing personnel, finance personnel, store personnel and administrative personnel. Some positions will be combined in the initial phases of operation, to be broken out separately as operational income allows.

### **5. Financial Plan**

#### **5.1 Important Assumptions**

The financial plan depends on important assumptions, which we have attempted to outline here. These key assumptions are:

- A slow-growth economy, without major recession.
- Access to low-cost equity capital and financing sufficient to support our

operations until TICO is in the black.

- Being able to employ TIYBI residents in non-management positions, allowing for lower salary costs that provide a comparably better wage overall.
- TICO's ability to capture at least 50% of TIYBI grocery business within one year.
- In-kind services of Glide, Life Learning Academy and Job Corps for renovation and minor construction necessary to convert former Navy Grocery Exchange facility into a modern grocery operation.
- TICO will receive first right of refusal as TIYBI primary grocer, post-redevelopment.
- Operation as an IRS recognized 501(c)4 tax-exempt co-operative.

## 5.2 Key Financial Indicators

The most important factor in our position is the ability to procure financing and/or grants to go to the next level. Since there will be no cost or acquisition of and renovation of the physical plant, we assume that a majority of our costs will be in shelf stock and salaries.

## 5.3 Break-even Analysis

We expect to close out our first fiscal year with over \$6 million in sales with net earnings in excess of 10%.

Pro Forma Profit and Loss			
	First fiscal year	Second fiscal year	Third fiscal year
Sales	\$6,896,250	\$7,241,062	\$7,603,117

Direct Costs of	\$5,000,000	\$5,250,000	\$5,512,500
Goods			
Other	\$0	\$0	\$0
	-----	-----	-----
Cost of Goods Sold	\$5,000,000	\$5,250,000	\$5,512,500
Gross Margin	\$1,896,250	\$1,991,062	\$2,090,617
Gross Margin %	27.49%	27.49%	27.49%
Expenses:			
Payroll	\$350,000	\$364,000	\$378,560
Sales and	\$20,000	\$20,000	\$20,000
Marketing and			
Other Expenses			
Depreciation	\$ _____	\$ _____	\$ _____
Leased Equipment	\$6,000	\$6,000	\$6,000
Utilities	\$ _____	\$ _____	\$ _____
Insurance	\$60,000	\$60,000	\$60,000
Rent	\$120,000	\$124,800	\$129,792
Other	\$7,500	\$7,500	\$7,500
Payroll Taxes	\$21,000	\$21,840	\$22,714
	-----	-----	-----
Total Operating	\$584,500	\$604,140	\$624,566
Expenses			
Profit Before	\$ _____	\$ _____	\$ _____
Interest and Taxes			
Interest Expense	\$ _____	\$ _____	\$ _____
Taxes Incurred	\$ _____	\$ _____	\$ _____
Net Profit	\$1,311,750	\$1,386,922	\$1,466,051
Net Profit/Sales	19.02%	19.15%	19.28%

## **5.2 Projected Cash Flow**

We expect to be able to support our cash position during the first fiscal year with assistance from the Mayor's Office of Economic Development, primarily in the form of grants and secondarily in the form of no- or very low-interest loans. This financing would directly affect a) our ability to guarantee payroll obligations for the first six months of operation, and b) our ability to stock our shelves initially and for the first three months of operation. We anticipate that the total amount necessary in seed monies would be \$1.8 million dollars.

We anticipate being able to develop a solid sales record that will positively influence our ability to gain Net 10 and then Net 30 terms with our suppliers and wholesalers. Once on that footing, with continued good patronage from TIYBI residents and continuing outstanding service, TICO should be able to transition to a business with no outstanding debt within five years.



# TIDA

## Business Plan for a Grocery Store on Treasure Island

Submitted on behalf of Treasure Island Mini-mart  
2004

Resubmitted 2/23/07  
415-986-2788



David Imada

Consultant

650-714-7255

464 Fuller Street

Santa Clara, CA 95054

This business plan is and confidential and is the proprietary property of David Imada and Joey Vazhappally. No reproduction of any sort or release of this document is permissible without the prior written consent.

## 1.0 Executive Summary

The Treasure Island Super Market (TISM) - unlike a typical grocery store, is willing to enter a market that does meet the requirements used by the major chains, such as Safeway, Albertson's, etc. TISM will provide a combination of quality food products at value pricing, ready to eat quick service style meals, full service deli, and with a customer oriented atmosphere. Treasure Island Super Market is the answer to an increasing demand by the island residents and workers. The public (1) wants value for everything that it purchases, (2) is not willing to accept anything that does not meet its expectations, and (3) does not want to drive or catch a bus that is over 1-2 miles in distance to shop.

In today's highly competitive environment, it is becoming increasingly more difficult to differentiate one grocery store concept from another. Treasure Island Super Market does this by being the only store to operate on Treasure Island, with its limited population and lower income base. We will be accepting food stamps, the WIC program, credit cards, personal checks, credit cards and cash. In addition, we will be offering money order and money gram services. No national chain has expressed any interest in this small market.

This plan is prepared to obtain approval of a medium term lease 5-10 years, while the redevelopment plans are finalized. Financing is in place through venture capital commitments by private investors. entertaining dining experience.

### 1.1 Objectives

Treasure Island Super Market objectives for the first three years of operation include:

- Becoming profitable within the first six months of operations
- Keeping employee labor cost between 16-18% of revenue.
- Averaging sales between \$3-4 million dollars per year.
- Maintaining tight controls on costs and operations by utilizing automated computer/Internet control.

### 1.2 Mission

Treasure Island Super Market will strive to be the premier grocery store in the local marketplace. We want our customers to have the total experience when visiting Treasure Island Super Market. We will be doing unique things (such as serving ready to eat barbeque on a mesquite grill) that will set us apart from the competition.

Our main focus will be having a wide variety of brand and private label grocery products for sale, at a great value. We will feature a large selection of freshly prepared food.

Customer satisfaction is paramount. When approached by a customer with a request, our motto will be, "Yes is the answer; what is the question?" We will strive for broad appeal. We want to be the grocery store of choice for everyone: families and singles, young and old, male or female.

Employee welfare will be equally important to our success. All will be treated fairly with the utmost respect. We want our employees to feel a part of the success of Treasure Island Super Market. Happy employees make happy customers.

We will combine products, value pricing and friendly staff to create a sense of "place" in order to reach our goal of over-all value in the shopping experience.

### 1.3 Keys to Success

The keys to the success of Treasure Island Super Market are:

1. The creation of a unique, innovative, atmosphere that will differentiate us from the competition
2. Execution of our primary goal to serve nothing but the highest quality food at unbelievably low prices in a clean, fun environment. We must deliver on this pledge 100% of the time, without exception.
3. Controlling costs at all times, in all areas.
4. Hiring the best people available, training, motivating and encouraging them, and thereby retaining the friendliest, most efficient staff possible.

## 2.0 Company Ownership

Treasure Island Super Market – will be operated as an LLC to start and will change as needed for tax purposes. Joey Vazhappally is the principal owner. It is his intention to offer outside ownership in Treasure Island Super Market on an equity, debt, or combination basis in order to facilitate the start-up and growth of Treasure Island Super Market.

Mr. Vazhappally has over 10 years of experience in starting, operating and managing convenience stores in California.

### 2.1 Start-Up Summary

- **Store Design** -- Upon approval from TIDA, a contract will be awarded
- **Architectural Plans** -- Upon approval from TIDA, a contract will be awarded
- **Pre-opening Labor** -- This will cover training of employees and management as well as cleaning and organizing the grocery store prior to opening
- **Interior Construction**
- **Inventory**

Treasure Island Super Market start-up expenses cover a wide range of items as shown in the following chart and table. Below is the detailed reasoning behind these estimates.

<b>Start-up</b>	
<b>Requirements</b>	
<b>Start-up Expenses</b>	
Inventory	\$100,000
Construction	\$?
Architectural Plans	\$?
Recruiter Fees/Help Wanted Ads	\$5,000
Pre-opening Labor-staff/Mgmt/Trainers	\$10,000
Uniforms	\$3,000
Office/Miscellaneous Expenses	\$5,000
<b>Total Start-up Expenses</b>	<b>\$123,000</b>

Total Requirements 3500,000

Funding	
Investment	
Joey Vazhappily	\$200,000
Investor 1	\$150,000
Investor 2	\$150,000
Total Investment	\$500,000

### 3.0 Services

Treasure Island Super Market will open seven days per week. We will only close our locations on Christmas and Thanksgiving. The store will be open from 7:00 am to 11:00 pm. Coffee, soft drinks, fast foods, and breakfast will be offered at competitive prices.

#### 3.1 Competitive Comparison

Treasure Island Super Market will have broad customer appeal due to its being the only grocery store on the island. In addition, the store will offer a wide variety of food offerings, and low price points. We will not only compete with the convenience stores, but also with the national chains.

In competing against the national grocery stores, we will have the following advantages:

- Location
- Hiring of residents
- Regionalized foods to match the ethnicity of the island residents
- We will be able to staff our grocery store with 25% fewer employees than our competition. With only two cashier, shorter operating hours, and out-front servicing of our food bars, we can efficiently run with a reduced staff.

#### 3.2 Technology

The Treasure Island Super Market will invest in a single high-speed computer to provide a fast and efficient connection to the Internet and also be a link to our cash registers. We will then be able to poll the grocery store nightly and be able to daily digest key financial information.

### 4.0 Market Analysis

#### Market Definition

There are no grocery stores on Treasure Island or within a 10-mile radius of Treasure Island (TI). There are no existing Farmer's Markets within a 10-mile radius of TI.

#### Demographics

Due to lack of data, an estimate of 3,500 individuals (provided by TIDA) is used as the population base. A majority of the residents are unemployed, on assistance benefits, single mothers, and minorities, made up of African-American, Asians, and Hispanics. A majority of the rental housing units are allocated for low-income families. Another 300 people work on TI during the day.

There are a total of 766 multi-family rental units  
222 units are being set aside for homeless families

192 units or 25 percent of the available housing will be made available to consortium member institutions, which also include City College of San Francisco, Golden Gate University, San Francisco Art Institute, San Francisco State University and University of San Francisco.

#### Average Household Income

Based on the average rent the table illustrates the projected average household income.

Household Size	Family Income
1	\$21,300
2	\$24,300
3	\$27,350
4	\$30,400
5	\$32,850

Based on the USDA, the table illustrates the maximum food stamps benefits.

People in Household	Maximum Monthly Allotment
1	\$149.00
2	\$274.00
3	\$393.00
4	\$499.00
5	\$592.00
6	\$711.00
7	\$786.00
8	\$898.00

Our marketing strategy is to enhance, promote, and support our contention that we have a superior product, service, and location.

#### 4.1 Target Market Segment Strategy

*TI\$M*

TI\$M intends to cater to the lower income residents of TI that comprise the majority of the population. We have chosen this group for several important reasons. First and foremost is the sheer size. With over 50% of the island residents living in low-income housing, we will need a broad base and mass appeal to fill them. It is our goal to have "something for everyone" every day, at value prices on our shelves.

#### 4.1.1 Market Needs

Treasure Island Super Market sees our targeted market group as having many grocery dining dollar needs. Taken from a recent survey, below are the items our core group wanted:

- Accept food stamps.
- Participate in WIC program
- Fresh meats, seafood, produce
- Deli fast foods: pizza, chicken, sandwiches, etc.
- More infant items – formula, diapers, etc.
- Lower prices

#### 4.2.2 Main Competitors

There are no competitors at this time.

### 5.0 Marketing Strategy

A combination of local media and local store marketing programs will be utilized. Local store marketing is most effective, followed by radio, then print. We believe, however, that the best form of advertising is still "word-of-mouth." By providing unbeatable quality at unbelievable prices in a clean and friendly grocery store, we will be the talk of the town. Therefore, the execution of our concept is the most critical element of our plan.

#### 5.1.0 Positioning Statement

Our main focus in marketing will be to increase customer awareness in the surrounding community. We will direct all of our tactics and programs toward the goal of explaining who we are and what we are all about. We will price our products fairly, keep our standards high, and execute the concept so that word-of-mouth will be our main marketing force.

#### 5.1.1 Pricing Strategy

All items will be competitively priced and include weekly loss leaders.

#### 5.1.2 Marketing Tactics

We will employ three different marketing tactics to increase customer awareness of Treasure Island Super Market. Our most important tactic will be word of mouth/in-store marketing. This will be by far the cheapest and most effective of our marketing programs. The second marketing tactic will be Local Store Marketing (LSM). These will be low-budget plans that will provide community support and awareness for our facility. We plan on doing approximately two or three LSM programs per marketing quarter. The last marketing tactic will be local media. This will be the most costly and will be used sparingly to supplement where necessary.

#### 5.1.3 Marketing Programs

##### Word Of Mouth/In-Store Marketing

- Table tents.
- Wall posters.
- V.I.P. party.
- In-store products samples to customers

- Outdoor advertisements changed weekly
- Grand Opening celebration.

### Local Store Marketing

- Local charity carwash site.
- Customer raffle for Treasure Island Super Market gift certificates
- Free Treasure Island Super Market "T" shirts to customers

### Local Media

- Direct mail piece - containing interior pictures of our grocery store, our prices, and an explanation of our concept.
- Radio campaign - complete with live remotes on our parking lot. We will pick the three top local stations with which to place our short and catchy ads. We will also sponsor radio call-in contests with free gift certificates to Treasure Island Super Market as the prize. We will trade our complementary gift coupons for free radio time. We will also make "live on the air" presentations of our food products to the disk jockeys, hoping to get the reactions broadcast to the listening audience.
- Newspaper campaign - placing several ads throughout the month.

## **5.0 Management**

The initial management team depends on the founders themselves, with little back up. As we grow we will take on additional help in certain key areas. Part of our basic philosophy will be to run our executive management "lean and mean." We will not add additional overhead until absolutely necessary. This will mean that the initial staff support team will have to "wear many hats," so to speak. By doing this, we will keep our overhead as low as possible, allowing us to adequately staff our grocery stores. This will also allow our business partners to recoup their initial investments as quickly as possible and enjoy a higher return.

At present time, Joey Vazhappally is the sole individual firmly committed to the Treasure Island Super Market concept. Others, who have helped on the development of this business plan, have expressed a desire to join in this venture at the appropriate time.

Other key personnel is the management team. Several candidates have already been identified for the Treasure Island Super Market, depending upon opening dates.

No shortage of qualified staff or management from local labor pools the market area is expected.

### **5.1 Organizational Structure**

Currently, we plan to have our accounting and payroll functions done by a contracted bookkeeping service. However, we will constantly monitor this expense and at such time that it is economically feasible, bring this function in-house. Other possible positions that might be added at a later date include marketing director, purchasing agent, controller, and administrative assistants.

Operations of the store will be the responsibility of the proprietor/managing partner.

### **5.2 Management Team**

Treasure Island Super Market is currently the creative idea solely of Samuel Vazhappally. As the company is small in nature, it requires a simple organizational structure. Implementation of this organization form calls for Samuel Vazhappally to make all of the major management decisions in addition to monitoring all other business activities.

Specific opportunities exist in the store operations supervisory area (not needed initially). These people will be recruited when needed in the local market. However, the first key employee needed will be the Assistant Store Manager. This individual will assist in the detail development of the Treasure Island Super Market concept plus operate the first grocery store. Hiring of this individual is slated during the initial construction phase.

### 5.3 Personnel Plan

The table below shows our initial staffing estimates.

Personnel	2005
Proprietor/Managing Partner	\$50,000
Assistant Manager	\$25,000
Employees	\$105,000

Sales and Marketing Personnel	
Name or title	\$0
Other	\$0

General and Administrative Personnel	
Director of Training	\$0
Controller	\$0

Other Personnel	
Name or title	\$0
Other	\$0

Total Payroll	\$180,000
---------------	-----------

### 7.0 Break-Even Analysis

This analysis includes an estimated lease rent for the facility.

Projected gross sales 2005	
Family of four - \$499/food stamps	
438 Homes, Low income population	
438 families @ \$499/month food	\$2,622,744
438 families @ \$200/month non food	\$1,051,200
328 families Market rent population	
328 families @ \$857*/month food	\$3,373,152
328 families @ 200/month non food	\$787,200
Annual Gross Sales	\$7,834,296
Profit Margin 5%	\$391,714
Less Employees Expenses	\$180,000
Less Rent	\$24,000
Utilities	\$18,000
Net Profit before taxes	<u>\$169,714</u>

\*Includes 59% increase adjustment from national average for San Francisco









TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,  
BLDG. ONE, 2<sup>ND</sup> FLOOR, TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0880 FAX (415) 274-0299  
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**\*\*NOTICE OF AD HOC NOMINATION COMMITTEE MEETING\*\***

TREASURE ISLAND DEVELOPMENT AUTHORITY  
AD HOC NOMINATION COMMITTEE  
MEETING AGENDA  
June 13, 2007 1:00 P.M.

Room 400, City Hall  
1 Dr. Carlton B. Goodlett Place

Committee Members

Jesse Blout      Jared Blumenfeld      Owen Stephens

Mirian Saez, Director of Island Operations  
Peter Summerville, Commission Secretary

ORDER OF BUSINESS

1. Call to Order and Roll Call
2. Election of Committee Chairperson (*Action Item*)
3. Nominations for Officers of the Treasure Island Development Authority Board of Directors (*Action Item*)
4. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Development Authority Office, 410 Avenue of the Palms, Building 1, Treasure Island, and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

### **Disability Access**

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The nearest accessible BART station is Civic Center Plaza at the intersection of Market, Grove, and Hyde Streets. The accessible MUNI Metro lines are the J, K, L, M, and N (Civic Center Station or Van Ness Avenue Station). MUNI bus lines serving the area are the 47 Van Ness, 9 San Bruno, and the 6, 7, 71 Haight/ Noriega. Accessible curbside parking is available on 1 Dr. Carlton B. Goodlett Place and Grove Street. For more information about MUNI accessible services, call 923-6142.

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The ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

### **Lobbyist Ordinance**

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### **KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE**

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact: Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [sotf@sfgov.org](mailto:sotf@sfgov.org).

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the SOTF or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>



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**\*\*\*Please Note Location\*\*\***

**Revised Agenda**

Treasure Island /Yerba Buena Island  
Citizens' Advisory Board

**Tuesday June 5, 2007 -- 6:00 p.m.**

**San Francisco City Hall, Room 34  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102**

- I. Roll Call
- II. Approval of October 24, 2006 and April 3, 2007 CAB Minutes. (Action Item)
- III. TIDA Staff Updates (Information Item):
  - a) Treasure Island Development Authority Board meetings of April 11 and May 9, 2007.
  - b) Legislative
  - c) Development Schedule
  - d) Naval Negotiations
  - e) Bay Bridge
  - f) Job Corps
  - g) Island Clean-Up
- IV. Discussion of Yerba Buena Island - Bay Bridge On and Off Ramps (Discussion Item)
  - a. Presentation by Caltrans on Current and Potential Safety Measures for the Ramps.
  - b. Discussion of Planning for Ramps Connecting to New Eastern Span of the Bay Bridge.
- V. Elections (Action Item)
- VI. Future Agenda Items Discussion. (Action Item)
- VII. Announcements from Board members. (Information Item)
- VIII. Public Comments
- IX. Adjourn

## MEETING AGENDAS AVAILABLE ON E-MAIL

If you would like to receive TICAB meeting agendas by e-mail, please send your name and e-mail address to [TICAB@sfgov.org](mailto:TICAB@sfgov.org).

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The closest accessible BART is Civic Center, three blocks from the City Hall at the intersection of Market, Grove and Hyde Streets. Accessible MUNI lines serving this location are: #42 Downtown Loop, 9 San Bruno and the #71 Haight/Noriega. Accessible Muni Metro lines are J, K, L, M and N stopping at the Muni Metro Civic Center Station at Market and Van Ness. For more information about MUNI accessible services, call 923-6142. Accessible curbside parking is available on Grove Street.

### TREASURE ISLAND WEBSITE

Check out the Treasure Island website at [www.sfgov.org/treasureisland](http://www.sfgov.org/treasureisland) to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.

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## MEMORANDUM

**TO:** Mirian Saez  
Director of Island Operations

**FROM:** Lori Mazzola, Event Coordinator

**DATE:** June 5, 2007

**RE:** **SPECIAL EVENTS / PUBLIC ACCESS**

---

In preparation for the Director's Report for the upcoming TIDA meeting, please find a briefing of recent and upcoming events on Treasure Island.

- ❖ Benchmark Destinations is hosting a gala event for Performance Food Group in the Administration Building for 450 guests.
- ❖ The San Francisco Renegades Drum and Bugle Corps continue to use Treasure Island as practice grounds.
- ❖ Earth Island Institute and Nature in the City will hold a Habitat Restoration Field Trip on YBI June 9th.
- ❖ "Chicken Hooray, LLC" continues to bring a chicken rotisserie business to Treasure Island to provide gourmet chicken meals to residents on Treasure Island on a weekly basis.

### **Waiver of Fee Disclosure**

- ❖ The Life Learning Academy held a picnic for its students to celebrate Memorial Day on May 28 in the picnic area across from its facility.
- ❖ PricewaterhouseCoopers held a staff picnic and volunteer day on May 31<sup>st</sup>. Over 300 PWC staff spent the day volunteering on Treasure Island and Yerba Buena Island. The volunteers performed habitat restoration on YBI with Nature in the City, performed landscaping work with Rubicon Programs, held educational seminars with TI Job Corps students, painted murals and assisted with renovations to Walden House, TI Sailing Center, SF Boys and Girls Club, and the Delancey Street Life Learning Academy. PWC also donated electronic equipment to the Treasure Island Boys and Girls Club, the Life Learning Academy, Kidango, Glide YouthBuild and TIHDI. PricewaterhouseCoopers estimated more than \$10,000 in materials and donations was spent, and over 1,200 hours of labor were donated to the participating organizations.
- ❖ TIHDI hosted a Flea Market and craft fair with TICN for residents on the Great Lawn on June 2, 2007.
- ❖ The Life Learning Academy has installed a student art exhibit in the Administration Building Gallery which features works of art produced by the students over the school year.



DATE	TYPE	LOCATION	EVENT	START	END	GUESTS
22 Jun 07	Wedding	Casa de la Vista	Danielle delos Santos/David Currier	1PM	10PM	160
22 Jun 07	Sport/Fundraiser	Great Lawn	Sports 4 Kids	8AM	8PM	300
23 Jun 07	baseball	Sports Field	San Francisco Little League	9AM	6.30PM	
23 Jun 07	Sport/Picnic	H Ave & 6th St Picnic	SF Fog Rugby Football Club	9AM	5PM	250
23 Jun 07	Wedding	Chapel/Casa	Sandra Renee Curdin/Joe Vivas	3PM	12AM	150
24 Jun 07	baseball	Sports Field	San Francisco Little League	9AM	6PM	
24 Jun 07	Wedding	Casa de la Vista	Taste Catering			100
25 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7.30PM	
26 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	6.30PM	
27 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7PM	
28 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	6.30PM	
29 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7.30PM	
30 Jun 07	baseball	Sports Field	San Francisco Little League	9AM	6.30PM	
30 Jun 07	Wedding	Chapel/Casa	Martha Mueller/George Cook	1PM	12AM	100
01 Jul 07	Wedding	Chapel/Casa	Jason Silvey/Paula Simac	2PM	12AM	125
04 Jul 07	Party	Casa de la Vista	Everything Audio Visual	2PM	12AM	150
04 Jul 07	Picnic	Picnic H & 6th/Field	Dalancey Street	7AM	6PM	400
06 Jul 07	Party	Casa de la Vista	Dede Yekrangli	6PM	2AM	120
07 Jul 07	Wedding	Chapel/Casa	Amy Beehears/Sumit Yodav	2.30PM	2AM	100
07 Jul 07	Wedding	Building 1	Lemna Gallani	3PM	2AM	250
08 Jul 07	Wedding	Chapel/Casa	Denise Chow/Samuel Kim	3PM	11PM	200
14 Jul 07	Wedding	Chapel/Casa	Becky Offutt/Justin Murray	11AM	8PM	180
15 Jul 07	Wedding	Casa de la Vista	Judith Collins	2.30PM	11.30PM	75
20 Jul 07	Meeting	Casa de la Vista	SF Arts Commission	8AM	5PM	35
21 Jul 07	Wedding	Chapel	Jenine Quan/Eric Yodao	12PM	3PM	75
21 Jul 07	Wedding	Casa de la Vista	Ruth Wood/Adam Yagiz	2PM	12AM	150
24 Jul 07	Party	Building 1 Lobby	International Special Events Society	8AM	12AM	400
28 Jul 07	Wedding	Chapel/Casa	Veronica Delic	3.30PM	11.30PM	

DATE	TYPE	LOCATION	EVENT	START	END	GUESTS
05 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	6.30PM	
06 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7PM	
07 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	6.30PM	
08 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7.30PM	
09 Jun 07	baseball	Sports Field	San Francisco Little League	9AM	6.30PM	
09 Jun 07	Wedding	Chapel	Denise Yee/Philip Tacala	12PM	4PM	225
09 Jun 07	Wedding	Casa de la Vista	Johanna Bugess/Joseph Hart	3.30PM	11.30PM	150
09 Jun 07	practice	Ave H & Cal Field	San Francisco Renegades	9AM	10PM	130
09 Jun 07	Nature Walk	Yerba Buena Island	Nature in the City/Earth Island Institute	8.45AM	12.30PM	30
10 Jun 07	baseball	Sports Field	San Francisco Little League	9AM	6PM	
10 Jun 07	practice	Ave H & Cal Field	San Francisco Renegades	9AM	10PM	130
11 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7.30PM	
12 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	6.30PM	
13 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7PM	
13 Jun 07	Dinner	Building 1 Lobby	Benchmark Destinations	6PM	10PM	500
14 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	6.30PM	
15 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7.30PM	
15 Jun 07	Wedding	Casa de la Vista	Cynthia Gonzales/Benjamin Kordich	5PM	1AM	150
16 Jun 07	baseball	Sports Field	San Francisco Little League	9AM	6.30PM	
16 Jun 07	Wedding	Casa de la Vista	Margaret Ziemienek/Michael Zimmer	4PM	12AM	150
16 Jun 07	practice	Ave H & Cal Field	San Francisco Renegades	9AM	10PM	130
17 Jun 07	baseball	Sports Field	San Francisco Little League	9AM	6PM	
17 Jun 07	Wedding	Chapel/Casa	Geilyn Neau	2PM	10PM	150
18 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7.30PM	
19 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	6.30PM	
20 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7PM	
21 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	6.30PM	
22 Jun 07	baseball	Sports Field	San Francisco Little League	4.30PM	7.30PM	

CITY & COUNTY OF SAN FRANCISCO



MIRIAN SAEZ  
DIRECTOR OF ISLAND OPERATIONS

TREASURE ISLAND DEVELOPMENT AUTHORITY  
410 AVENUE OF THE PALMS,  
J.G. ONE, 2<sup>ND</sup> FLOOR, TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660 FAX (415) 274-0299  
WWW.SFGOV.ORG/TREASUREISLAND

June 7, 2007

Ms. Nancy Weber  
PricewaterhouseCoopers  
Three Embarcadero Center  
San Francisco, CA 94111-4004

Dear Ms. Weber.

I write to express the Treasure Island Development Authority's gratitude and appreciation for all the hard work performed during the May 31<sup>st</sup> PricewaterhouseCoopers Treasure Island Volunteer Day. The entire Islands community benefited greatly from the improvement and beautification projects undertaken by PWC, and TIDA is most appreciative for the energy and enthusiasm that the PWC volunteers demonstrated throughout the day. The work performed on the 31<sup>st</sup> is a stellar example of the positive impacts volunteerism can have on a community.

Additionally, I wish to thank you individually both for selecting Treasure and Yerba Buena Islands as a site, as well as for your weeks of hard work ahead of the event and your dedication to making this day such a rousing success. We look forward to a continued positive relationship with PWC on any such projects in the future.

Sincerely,

  
Mirian Saez  
Director of Island Operations

CC: Claudine Cheng, President, Treasure Island Development Authority





CITY & COUNTY OF SAN FRANCISCO

MIRIAN SAEZ  
DIRECTOR OF ISLAND OPERATIONS

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June 7, 2007

Mr. David Imada, Consultant  
464 Fuller Street  
Santa Clara, CA 95054

Re: TIDA Business Plan for a Grocery Store on Treasure Island  
Submitted on Behalf of Treasure Island Mini-Mart, 2004  
Resubmitted 2/23/07  
(Received by TIDA on March 23, 2007)

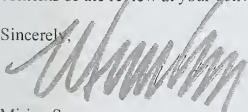
Dear Mr. Imada:

The Treasure Island Development Authority (TIDA) has reviewed your proposal for a grocery store on the Island. TIDA is most interested in providing Island residents, its commercial tenants and employees a grocery store that will meet their food and non-food interests and demands.

TIDA has reviewed your proposal. The proposal lacks pertinent information needed to evaluate its viability. Since your proposal submission was not a response to a solicitation by TIDA, no specifications were required of your proposal. However, I have attached part of the review for your general understanding of the missing elements. The attachment may be used as guidance if you are inclined to resubmit your proposal.

Again, thank you for your interest in Treasure Island. I am available to meet and discuss the contents of the review at your convenience.

Sincerely,

  
Mirian Saez,  
Director of Island Operations

Cc: Claudine Chang, President, Treasure Island Development Authority

Attachment



PORT OF SAN FRANCISCO  
M E M O R A N D U M

To: Mirian Saez  
Treasure Island Development Authority

From: Lawrence Brown

Date: 4 June 2007

Re: Financial Review of Treasure Island Grocery Store Development Proposal

---

Scope of Review

Pursuant to your request, I have reviewed the business plans submitted by the Treasure Island Mini-mart (TIM), and the Treasure Island Cooperative (TICO) for the development of a grocery store on Treasure Island.

Findings

Both proposals are lacking important financial and other information needed to evaluate their viability. As a result, I recommend that the Treasure Island Development Authority (TIDA) defer making a decision on both proposals pending the receipt of further information. In order to adequately evaluate the proposals, I need, at a minimum, the following information.

Additional Information Needed

1. *Lease Proposal* - A lease proposal should be provided. The proposal should include the size of space to be leased (measured in terms of square footage), proposed lease term, and proposed rent. For the lease term the proposers should include the length of the base period, and the number and length of any lease extensions, if applicable. For rent they should break out the amount of base rent, and percentage rent, if any (including information on how percentage rent is calculated).
2. *Start-up Costs* - A determination and breakdown of all costs to be incurred during the start-up phase of the development with an estimate for the total time needed for the design, permitting and construction of the necessary leasehold improvements. At a minimum, start-up costs should include cost estimates for the following items: design, permitting and construction/or installation of the leasehold improvements (including all fixtures & equipment); pre-development costs; pre-opening labor cost including necessary training; pre-opening marketing & advertising; construction period rent, initial store stock and inventory, working capital; and initial general and administrative expenses.
3. *Financing Plan* - A plan for financing the start-up, and on-going costs is needed. The plan should clearly indicate the amount of equity, debt, grant or other financing being provided (or needed) for the development. Include evidence that the financing will be available. (In the case of debt financing such evidence could include commitment letters from lenders; or, at a minimum, an "expression of interest" letter.) For debt financing provide information on the loan term, interest rate, whether the interest rate is fixed or variable, and any other requirements of the loan, such as a balloon payment at the end of the loan term.
4. *Staffing Plan and Schedule* - A detailed staff schedule is needed that shows how the grocery store will be staffed during its normal hours of operation in terms of managers, cashiers, security personnel (if any, clerks, back office and/or other store employees. Include all of the hours that store personnel will be expected to work including time for set-up (before the store opens for business) and close out (after the

store closes for business). The staffing plan should also include the expected fixed salary or hourly wage rate, (as appropriate) for each category of staff employed. The plan should show the change in staffing through time (if any), and should encompass the entire period included in the requested financial projections (see below).

5. *Financial Projections* - Income statement/cash flow projections for the project for at least 10 years, or the base lease term, whichever is longer. The projections should clearly show projected annual revenues and expenses, and annual cash surpluses and/or shortages). Funding any cash shortage should be addressed in the "financing plan". Please provide all assumptions used in deriving the forecast, including (but not limited to); calculation and/or description of how projected revenues were determined (for further specifics see below), assumed annual growth rate of revenues and various expenses, interest rates assumed for debt financing. Please provide justification for the assumptions used.

The projections should also include the following information: cost of goods sold, gross profit margin (gross profit/sales %), payroll (salary & benefits), sales & marketing costs, utilities, insurance expense, rent to TIDA, lease expense, depreciation, operating expense margin (operating profit/sales %), interest expense, taxes, and debt service (principal portion). The projected payroll expense should be derived from the proposed "staffing plan and schedule" (see above).

Information on how revenues were derived should include of the following: How large (in terms of people) is the assumed market for the grocery store? What are the different market segments (residents, TI workers, etc.), and how many are in each segment? How much of each market segment does the grocery store expect to "capture"? How many transactions are projected per week?

For residents of Treasure Island, or those who are expected to do most of these grocery shopping at the Treasure Island store; what is the expected weekly revenue per household? How was it determined? How many households are assumed?

For those shoppers who do most of their grocery shopping elsewhere, what is the expected average dollar size of each transaction? How many transactions are expected per week?

In addition to the above, I have the following proposal-specific comments:

#### *The Treasure Island Mini-mart proposal*

- *Staffing/Payroll* - The proposal indicated that the grocery store would operate 16 hours a day, 363 days a year, and that initial staffing could consist of 2 cashiers, a proprietor/managing partner and an assistant manager. In Section 6.3 (Personnel Plan) the proposal shows total payroll expenses of \$180,000; \$50,000 for the manager/partner, \$25,000 for the assistant manager, and \$105,000 for the employees. There do not appear to be enough managers to adequately staff the store. With a 16 hour day, the store will be open 112 hours a week; 17 hours a day, or 119 per week if you assume an additional hour per day for pre-opening and closing duties. It is not clear how these hours will be covered with just two managers on staff.

Regarding employee salaries, I calculated that employee wages (excluding benefits) would total \$106,170 annually, based on the current San Francisco minimum wage of \$9.14 per hour. This is greater than the \$105,000 assumed in the proposal.

The calculation is as follows:

$$\begin{aligned} 16 \text{ hours/day} * 363 \text{ days/year} &= 5,808 \text{ hours/year} \\ \$9.14/\text{hour} * 5,808 \text{ hours/year} * 2 \text{ cashiers} &= \$106,170.24/\text{year} \end{aligned}$$

*Annual Revenues* - In Section 7.0 (Breakeven Analysis) a breakdown of the projected annual gross sales is provided. The breakdown indicates that that TIM assumes that 438 low income 4 person-households would spend \$499/month on food, and \$200/month on non-food items (using 2005 figures). Information from

the US Department of Agriculture (USDA) indicates that for 2005 the maximum food stamp benefit was \$499 for a 4 person-household; however the average monthly benefit was just \$93/person (or \$372/month for a 4 person household). In light of this, what justification was used to assume a monthly expenditure of \$499 for a 4 person-household.

Additionally, TIM assumed that 328 regular income families would spend \$857/month on food, and \$200/month on non-food items (for a total of \$1,057 month) using 2005 figures. TIM further indicated that the \$857 monthly expenditure on food represented a "59% increase adjustment from the national average for San Francisco". My research, however, indicated that the average annual amount spent for food at home in 2004-2005 was \$3,322 in the U.S. (national average), and \$3,909 in San Francisco. This corresponds to a monthly expenditure of \$276.83 for the U.S. and \$325.75 for San Francisco. This is significantly below that \$857 monthly food expenditure assumed in the proposal. It is also important to note that San Francisco spent just 8.5% more than the national average, as compared to the 59% more assumed in the proposal.

Finally, using information gathered from the Food Marketing Institute for 2007 (source: U.S. Grocery Shopper Trends, 2007) we noted that average weekly grocery expenditures for a household with children totaled \$117.60 (\$131.40 for households of 5 or more). The higher figure of \$131.40 per week corresponds to a monthly expenditure of \$569.40, or an assumed expenditure of \$617.80 for San Francisco using the 8.5% increase adjustment noted in the paragraph above. In light of the above facts, what justification was used to assume a monthly food expenditure of \$857, and \$1,057 total grocery expenditure for a 4 person-household.



CITY & COUNTY OF SAN FRANCISCO

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MIRIAN SAEZ  
DIRECTOR OF ISLAND OPERATIONS

May 31, 2007

Mr. Nathaniel Ford, Executive Director  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 7th Floor  
San Francisco, CA 94103

Dear Mr. Ford,

Thank you for your recent visit to Treasure Island and for the time spent discussing Island issues with myself and staff. In the course of the discussion, several initial action items were identified that we agreed the Treasure Island Development Authority (TIDA) and the Metropolitan Transportation Agency (MTA) would pursue in order to improve services provided to the Treasure and Yerba Buena Islands community. These items were:

- Weekend extension of the MUNI 108 Route to include a stop at the 4<sup>th</sup> Street and King Street commercial corridor
- Regular MUNI 108 schedule throughout the Labor Day Weekend during the planned Bay Bridge closure
- Placement of Islands-specific public information on buses servicing the MUNI 108 Route

TIDA is appreciative of SFMTA's commitment to the Island community, and we look forward to a continued productive partnership. If there is anything I or my staff can do to assist in your efforts, please do not hesitate to contact me directly at (415) 274-0669.

Sincerely,

Mirian Saez  
Director of Island Operations

CC: Claudine Cheng, President, TIDA Board of Directors  
Debra Johnson, Chief of Staff/Director of External Affairs, SFMTA





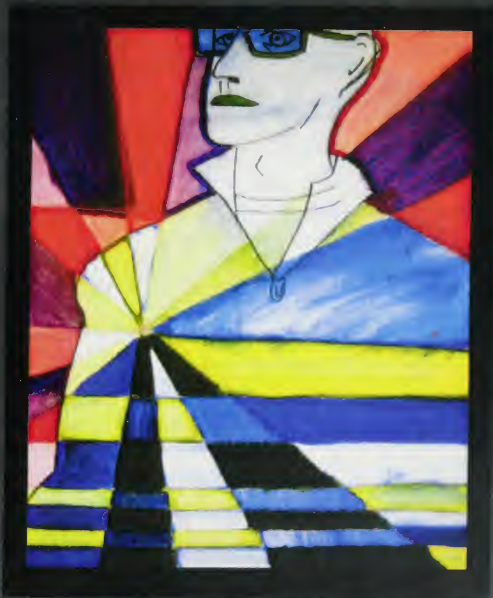
# Life Learning Academy Art Show

**May 31 - June 14**

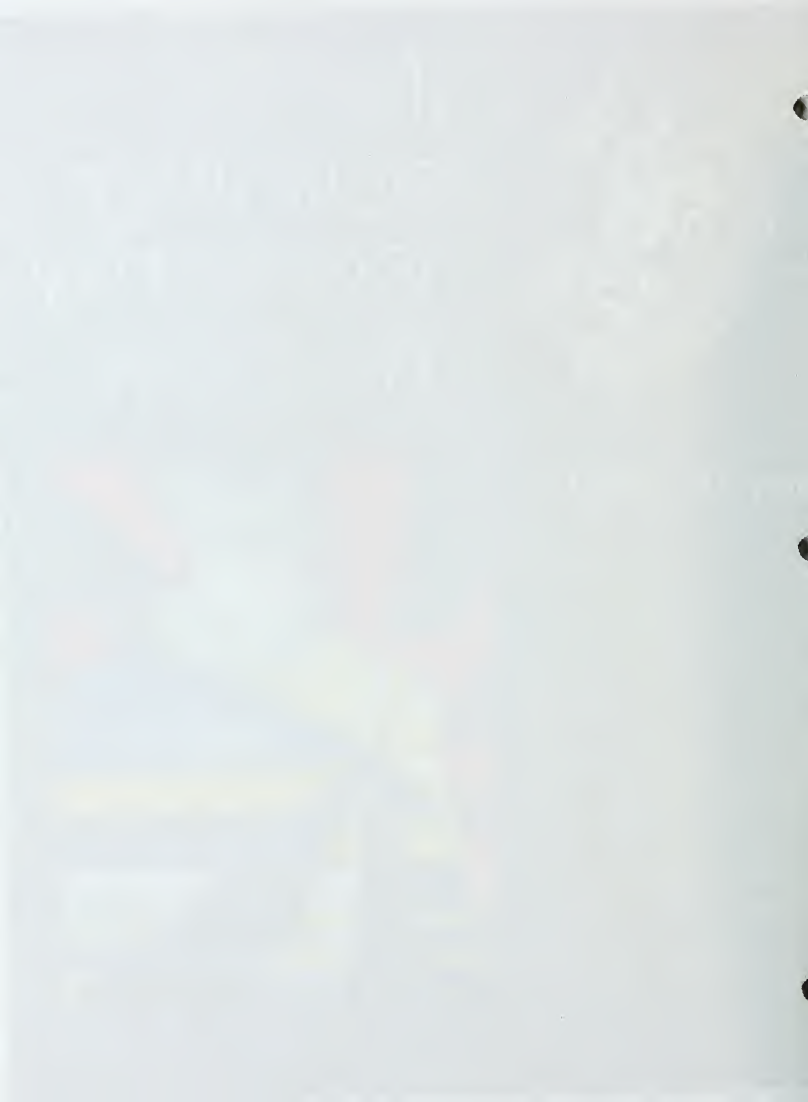
The Building One Gallery  
Treasure Island  
410 Avenue of the Palms  
Building 1, First Floor  
Treasure Island, SF, CA  
94130

Artists' Reception:  
May 31, 6-8 pm

Complimentary  
Refreshments by  
L.L.A. Catering



Proudly Presented by The Treasure Island Development Authority



# Celebrate Sailing with Treasure Island Sailing Center

Presented by  **West Marine**  
We make boating more fun!

20

07

**Racing  
Cruising  
Games  
Party!**

**Almar**   
**Marinas** *The West's Finest*

Raffle and Auction  
proceeds to  
benefit:



**TREASURE ISLAND  
SAILING CENTER**

For details visit:

**[www.tisailing.org](http://www.tisailing.org)**

## summer sailstice™

international sailing celebration

**[www.summersailstice.com](http://www.summersailstice.com)**

MOORINGS

• HUNTER MARINE

SAILTIME

•

WEST MARINE

OFFSHORE SAILING

HOBIE

200 Other Prizes.

### Summer Sailstice Event Schedule

Live Music by CRB (Caribbean Rythm and Blues)

#### Friday, June 22nd

8pm - Reception - TIYC

7pm - Dinner and Speaker Series - TIYC

#### Saturday, June 23rd

Club Nautique Photo Scavenger Hunt - All Day

One Design and PHRF Regatta - All Day

12:30pm - Treasure Isle Marina BBQ - TI Marina

1-3pm - Free Boat Rides - TISC

4pm - Children's Treasure Hunt - TIYC

4pm to 7pm - Silent Auction

4-8 pm - Main Event - TISC

6:30pm - Welcome/Intros

6:45pm - YRA Trophy Presentation

7 to 9pm - Dancing, Dinner, and Live Band

9pm - TIYC Movie Night - TIYC

#### Sunday, June 24th

Club Nautique Photo Scavenger Hunt - All Day

One Design and PHRF Regatta - All Day

Free US Coast Guard Boat Inspections - All Day

8am - Pancake Breakfast - TIYC

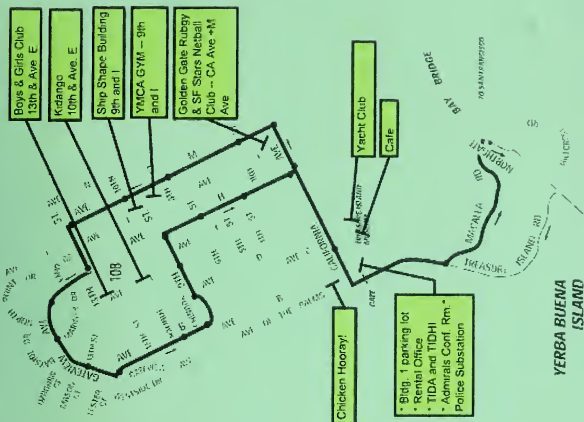
1-3pm - Free Boat Rides - TISC

5pm - Sailstice Regatta Trophy Presentation

Check out the Summer Sailstice Online Auction at <http://sfsummersailstice.cmarket.com>

Treasure Island Sailing Center is a non-profit organization whose mission is to make sailing accessible to the community by providing instruction and facilities to people of all skill levels, socio-economic backgrounds, and physical abilities.





Modified from: Ntsoftransist.51.org/schedules/images/m-5663\_202006123021.pdf



Mayor Gavin Newsom  
Claudine Cheng, President, Treasure Island  
Development Authority  
Mirian Saez, Director of Island Operations

# June 2007

Sun	Mon	Tue	Wed	Thu	Fri	Sat
See "Events" section on back for more details.						
Deadline for July Calendar: 6/15 E-mail: <a href="mailto:marianne.thompson@sfgov.org">marianne.thompson@sfgov.org</a>						
3	4	5	6 TI Festival Planning Session 5:30 pm	7 Chicken Hooray! 3 pm — 7:30 pm	8	9 Good Neighbors Members Meeting 10:30—1
10	11	12	13 TIDA Meeting 1:30pm to 4:30 pm	14 Chicken Hooray! 3 pm — 7:30 pm	15	16
Cross Roads Café Closed	Cross Roads Café Closed	Crossroads Café Closed	Cross Roads Café Closed	Cross Roads Café Closed	Cross Roads Café Closed	Cross Roads Café Closed
17	18 Understanding Credit	19	20 Community Meeting 7 pm — 8:30 pm All residents are urged to attend this meeting, as MTA will be here to gather your input on the 108.	21 Chicken Hooray! 3 pm — 7:30 pm	22	23
Cross Roads Café Closed	Cross Roads Café					
24	25	26	27	28 Chicken Hooray! 3 pm — 7:30 pm	29	30

## Important Numbers to Have

### Emergency:

911 for Cell Phones: (415) 553-8090  
 Non-Emergency Police Call (415) 553-0123

### Leasing Office

- Maintenance (415) 834-0211
- Emergency After Hours (415) 445-2184

### Comcast

(800) 266-2278

### Good Neighbors (Community Group)

Muni/511.Org (415) 520-6653

### Neighborhood Watch

(415) 738-8773

### Treasure Island Development Authority

(415) 274-0660

### SBC/ATT

(800) 310-2355

### SFICA - Community Association

eraport@aol.com (415) 242-2600

### SF Unified School District

(415) 554-7970

### San Francisco Supervisor Chris Daly

(415) 274-0311 ext. 301

### Treasure Island Creative Network

(415) 274-0660

### Treasure Island Development Authority

(415) 274-0311

### Treasure Island Homeless Dev. Initiative

(415) 274-0311

## Youth

Kidango [www.kidango.org](http://www.kidango.org) (415) 834-0602  
 SF Boys & Girls Club [www.bgsf.org](http://www.bgsf.org) (415) 362-9037

## Stores

**Treasure Island Mini-Market** 7 a.m. to 8 p.m., Saturday & Sunday 10 a.m. to 7 p.m.  
**Treasure Island Photo Booth** Treasure Island front gate. Hours are variable.

## Fresh Food

**Chicken Hooray!** The Chicken Hooray! Truck will serve fresh, hot chicken every Thursday in the Chapel Parking Lot. Please look for the red and silver checkered rotisserie truck. Hours of Operation: 3:00 PM to 7:30 PM

## Restaurant

**Crossroads Cafe by the Bay** Treasure Island Marina parking lot, outside the Treasure Island front gate Hours of operation: Tuesday through Friday: 7 a.m. to 3 p.m., Saturday: 8 a.m. to 3 p.m. *For to-go orders, please call (415) 362-5851 during regular business hours.*

**Job Corps Advanced Culinary Academy Fine Dining Restaurant** Job Corps - Building 368, 9th Street and Avenue C  
 Hours of operation: Tuesday through Thursday: 12 noon to 1 p.m. *Reservations required. Please call (415) 277-2301*

## Delivery to the Islands

**SAFEWAY DELIVERY** [www.safeway.com](http://www.safeway.com)  
**Planet Organics** (800) 956-5855 [www.planetorganics.com](http://www.planetorganics.com)  
**Chinese Food Mae Lee** (415) 242-1006  
**Gino's Pizza** (415) 922-0202  
**Pizza Lover** (415) 437-9400  
**Town Pizza** (415) 551-2524

## Island Related Websites

[www.sfgov.org/Treasureisland](http://www.sfgov.org/Treasureisland) (TI Development Authority)  
[www.TIHD.org](http://www.TIHD.org) (TI Homeless Dev. Initiative)  
[www.TreasureIslandOnline.net](http://www.TreasureIslandOnline.net) (Community Resources/News)  
[www.94130.com](http://www.94130.com) (Online community)  
[www.94130.net](http://www.94130.net) (Online community)

## Recreation

TI Sailing Center [www.tisailing.org](http://www.tisailing.org) (415) 421-2225  
 Golden Gate Rugby [www.sfggrfc.com](http://www.sfggrfc.com) (415) 335-3079  
 SF Stars Netball [www.starsnetball.com](http://www.starsnetball.com) (415) 259-8489  
 YMCA Gym (415) 765-9037  
 Marina [www.treasure-isle.com](http://www.treasure-isle.com) (415) 981-2416  
 Yacht Club [www.ttyc.org/](http://www.ttyc.org/) (415) 434-4475  
 SF Little League [www.sfl.org](http://www.sfl.org) (415) 263-0510

## Events

**Every Thursday: 3 pm – 7:30 pm** Chicken Hooray! Serving fresh, hot chicken in the Chapel Parking lot. Please look for the red silver checkered rotisserie truck.

**May 31—June 14:** Delancey Street's Life Learning Academy First Annual Art Show. Building One Gallery.

**June 2, 9am—2 pm** TICN Market at the Great Lawn. Vendors from the bay area will be invited to sell. Contact 415 274 0311 for details.

**June 6, 5:30 pm** The Treasure Island Festival Planning Kick Off at the Admiral's Conference Room, Building 1, 2<sup>nd</sup> floor, above the Villages and TIHDI offices.. We really hope you will join us to make this the best Festival yet. If you cannot attend this meeting but are interested in participating in the planning, please call 274-0311

**June 9, 10:30 –1:00** Good Neighbors Quarterly Membership Meeting in the Admirals Conference Room, 2nd Floor, Building One (above the leasing office). Lunch and childcare provided (to reserve your lunch and/or childcare, please call (415) 520-6653 or send an email to [good\\_neighbors@comcast.net](mailto:good_neighbors@comcast.net)

**June 13, 1:30 pm – 4:30 pm** TIDA Meeting Treasure Island Development Authority Meeting, 2nd Wed of each month unless otherwise specified. 1:30 - 4:30pm. San Francisco City Hall, Room 400. E-mail [TIDA@sfgov.org](mailto:TIDA@sfgov.org) for more information

**June 20, 7 pm – 8:30 pm** Community Meeting. Sponsored by TIDA, TIHDI and SFICA. Come to hear the latest on things that affect the community. In the ShipShape building.

**June 18th, 6 pm—8 pm.** Understanding credit and improving your credit, at the Shipshape Building. Offered by Palak Joshi, Economic Self-Sufficiency Prog. Coordinator, TIHDI. Free and open to all TI/YBI residents—but registration is required. Call (415) 274 0311 to register. Childcare provided upon request.

**On Wednesday, June 20th, at 7:00 pm, The Municipal Transportation Agency will host our Community Meeting. We strongly urge all residents to attend, so that you can give your input on the 108, and its potential rerouting. This is the only meeting that MTA will be hosting on the Island. Because transportation is an important focus for the Island we are dedicating the entire community meeting to MTA and their Transit Effectiveness Project. This is your chance to have your voice heard.**

**SAFEWAY Delivers to Treasure Island/ Yerba Buena Island!** After lots of lobbying by residents you can now log onto [www.safeway.com](http://www.safeway.com), order your groceries, and set a day and time for them to be delivered. You can get your first three deliveries for FREE by typing in BEFREE as the promo

**Good Neighbors Quarterly Membership Meeting :** Make a difference on the Islands! Come and meet your Neighbors

**June 9, 10:30 –1:00** in the Admirals Conference Room, 2nd Floor, Building One (above the leasing office). Lunch and childcare provided (to reserve your lunch and/or childcare, please call (415) 520-6653 or email:[good\\_neighbors@comcast.net](mailto:good_neighbors@comcast.net)

## Be a Part of the Solution!

Help make Treasure Island/Yerba Buena Island a safe and happy place for all of us  
— Report any suspicious activities immediately.

**For emergencies, call 911.**

- If you are calling from your cell phone, call (415) 553-8090 and you will be connected to SF 911

**For Non-Emergencies, call 415-554-0123**





















**AGENDA ITEM # 8(b)**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**June 13, 2007**

**Subject:** Resolution approving and authorizing the Director of Island Operations to Execute a Use Permit, including Waiver of Permit Fees, with Chicken Hooray, LLC, for the Use of the Parking Lot at Avenue of the Palms and California Avenue for the Purpose of providing fresh rotisserie chicken For Sale to Treasure Island residents.

**Staff Contact/Phone:** Mirian Saez,  
Director of Island Operations  
415-274-0660

**BACKGROUND**

Chicken Hooray, LLC is a licensed and insured food vendor truck which sells fresh, high-quality rotisserie chicken as well as potatoes, salad and bread. On November 27, 2006, the Director of Island Operations executed a revocable, non-exclusive Use Permit (the "Original Use Permit") with Chicken Hooray, LLC for a six month term that expired May 31, 2007, in accordance with the authority delegated to the Director of Island Operations under Section 10 of the Treasure Island Development Authority Rules and Procedures for Transfer and Use of Real Property. Chicken Hooray began service on Treasure Island in November 2006, arriving weekly on Thursday evenings, from 2:00PM to 8:00PM, to appeal to Treasure Island residents during the dinner hours. Under the terms of the Original Use Permit, Chicken Hooray, LLC pays a permit fee equal to Twenty Five Dollars (\$25) per use.

Over the past six months the operator of Chicken Hooray, Ms. Haechler, has received positive response from Island residents and tenants. Ms. Haechler has developed a relationship with some on-Island partners, such as the Treasure Island Sailing Center and the SF Golden Gate Rugby Club, for which she has catered events. While Chicken Hooray is still working to establish a consistent client base, the operator is optimistic that sales will continue to rise and is eager to become more involved in serving the Treasure Island community.

The operator of Chicken Hooray, LLC has requested an extension of the term on the same terms and conditions as the Original Use Permit except that the operator has requested a waiver of the permit fee so as to support Chicken Hooray's role as a valuable on-Island service which benefits the residents and community.

**STANDING UNDER ORIGINAL USE PERMIT**

Chicken Hooray is in the process of updating its insurance documents for compliance, has paid all permit fees due, and has met all other obligations under the Original Use Permit.

### **RECOMMENDATION**

Project Staff recommends approval from the Authority to authorize the Director of Island Operations to execute a new Use Permit, including waiver of permit fees, with Chicken Hooray, LLC, for the use of the parking lot at Avenue of the Palms and California Avenue on Thursday evenings from June 1, 2007 through November 30, 2007, so as to provide a healthy, fresh food option which benefits the public, employees, tenants, and residents of Treasure Island.

### **EXHIBITS:**

**Exhibit A:** Use Permit between the Authority and Chicken Hooray LLC for use of the parking lot at Avenue of the Palms and California Avenue from June 1, 2007 through November 30, 2007.

Prepared by: Lori Mazzola, Event Coordinator  
For Mirian Saez, Director of Island Operations

1 [Use Permit with Chicken Hooray, LLC for use of the parking lot located at Avenue of the  
2 Palms and California Avenue]

3 **Resolution approving and authorizing the Director of Island Operations to execute a**  
4 **Use Permit, including waiver of permit fees, with Chicken Hooray, LLC, for the use of**  
5 **the parking lot at Avenue of the Palms and California Avenue for the purpose of**  
6 **providing fresh rotisserie chicken for sale to Treasure Island residents.**

7  
8 WHEREAS, Former Naval Station Treasure Island is a military base located on  
9 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by  
10 the United States of America ("the Federal Government"); and,

11 WHEREAS, The Base was selected for closure and disposition by the Base  
12 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
13 subsequent amendments; and,

14 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
15 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
16 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
17 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
18 conversion of the Base for the public interest, convenience, welfare and common benefit of  
19 the inhabitants of the City and County of San Francisco; and,

20 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
21 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
22 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
23 as a redevelopment agency under the California Redevelopment Law with authority over the  
24 Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions  
25 of the Base which are subject to Tidelands Trust, vested in the Authority the authority to  
administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, On November 27 2006, under the authority delegated to the Director of  
Island Operations under Section 10 of the Treasure Island Development Authority Rules and

1 Procedures for Transfer and Use of Real Property, the Director executed a revocable, non-  
2 exclusive Use Permit with Chicken Hooray, LLC (the "Original Use Permit") for the use of the  
3 parking lot located at Avenue of the Palms and California Avenue on Thursday evenings  
4 during the six month period from November 27, 2006 through May 31, 2007, to position a food  
5 sales truck to sell fresh rotisserie chicken; and,

6 WHEREAS, The residents of Treasure Island and Yerba Buena Island have limited  
7 amenities and food outlets on the Islands; and,

8 WHEREAS, Chicken Hooray, LLC, has developed a client base on the Island, has  
9 been welcomed by the residents with positive response, and has worked with Island partners  
10 for community related events; and,

11 WHEREAS, Chicken Hooray, LLC has requested an extension of the term through  
12 November 29, 2007, and a waiver of the standard rental fees associated with the use of space  
13 so as to support Chicken Hooray's role as a valuable on-island service which benefits the  
14 residents and community; now therefore be it

15 RESOLVED, That the Authority Board hereby authorizes the Director of Island  
16 Operations to execute a new Use Permit, including waiver of permit fees, with Chicken  
17 Hooray, LLC, for the use of the parking lot at Avenue of the Palms and California Avenue for  
18 the purpose of providing fresh rotisserie chicken for sale to Treasure Island residents in  
19 substantially the form of Use Permit attached to this resolution as Exhibit A; and be it

20 FURTHER RESOLVED, That the Authority Board hereby finds that (i) entering into the  
21 Use Permit will serve the goals of the Authority and the public interests of the City and (ii) the  
22 terms of the Use Permit, including the waiver of permit fees, are commercially reasonable in  
23 light of the benefits that Chicken Hooray, LLC provides to the Authority and the Treasure  
24 Island community.  
25

CERTIFICATE OF SECRETARY

*I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at the Properly noticed meeting on June 13, 2007.*

---

John Elberling, Secretary





RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT



## USE PERMIT

This Use Permit (this "Permit") dated for reference only as June 4, 2007 is made by and between the Treasure Island Development Authority ("Authority") and Chicken Hooray, LLC ("Permittee").

### RECITALS

WHEREAS, pursuant to that certain Lease between the United States of America and Treasure Island Development Authority for Event Venues Naval Station Treasure Island, (the "Master Lease"), by and between the Authority and the Department of Navy (the "Navy"), a copy of which is attached hereto as Exhibit A, the Authority has the right to use that certain property located on Naval Station Treasure Island commonly known as the parking lot at Avenue of the Palms and California Avenue and portions of the parking areas adjacent thereto, all as more particularly shown on Exhibit B hereto (the "Premises"); and

WHEREAS, Permittee seeks to use the Premises for the purposes stated herein, subject to the terms and conditions of this Permit.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Authority and Permittee agree as follows:

**1. License.** Authority confers to Permittee a revocable, personal, non-exclusive and non-possessionary privilege to enter upon and use the Premises for the limited purpose and subject to the terms, conditions and restrictions set forth below. The privilege given to Permittee under this Permit is effective only insofar as the rights of Authority in the Premises are concerned, and Permittee shall obtain any further permission necessary because of any other existing rights affecting the Premises, or any portion thereof.

**2. Inspection of Premises.** Permittee represents and warrants that Permittee has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Permittee's Agents") of the Premises and the suitability of the Premises for Permittee's intended use. Permittee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

**3. As Is; Disclaimer of Representations.** Permittee acknowledges and agrees that the Premises are being permitted and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Permit is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Permittee acknowledges and agrees that neither Authority nor any of its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns ("Authority's Agents") have made, and Authority hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or

environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Permittee's use and permitted under this Permit, (v) the safety of the Premises, whether for the use of Permittee or any other person, including Permittee's Agents or Permittee's clients, customers, vendors, invitees, guests, members, licensees, assignees or permittees ("Permittee's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

**4. Seismic Report and Structural Report.** Without limiting Section 3 above, Permittee expressly acknowledges for itself and Permittee's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Permittee has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils on Treasure Island and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that buildings and any other structures or improvements located on or about the Premises may fail structurally and collapse.

**5. Use of Premises.** Permittee may enter and use the Premises during those days and hours shown on Exhibit D, attached, which occur within the Term of this Permit as set forth in Section 9 below for the sole purpose of operating a chicken rotisserie truck, and for no other purpose. Notwithstanding anything in this Permit to the contrary, Authority shall have the right at any time to relocate the Premises on a temporary or permanent basis. Authority shall provide Permittee with written notice of any such relocation, which written notice shall include a description of the relocated Premises and the period of such relocation. Permittee shall promptly comply with the terms of any relocation notice.

**6. Restrictions on Use.** Permittee agrees that, by way of example only and without limitation, the following uses of the Premises by Permittee, or any other person claiming by or through Permittee, are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

**(a) Hazardous Material.** Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as such terms are defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises, or transported to or from the Premises without the prior written consent of Authority. Permittee shall immediately notify Authority when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Premises. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to Authority and in accordance with all laws and regulations, return the Premises to the condition immediately prior to the release. In connection therewith, Permittee shall afford Authority a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "**Hazardous Material**" means material

that; because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Premises or are naturally occurring substances in the Premises, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises.

**(b) Nuisances.** Permittee shall not conduct any activities on or about the Premises that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to Authority, to the owners or occupants of neighboring property or to the public.

**(c) Damage.** Permittee shall not do anything about the Premises that could cause damage to the Premises or any Authority property.

**(d) Parking.** Permittee shall be allowed to park one rotisserie truck in the area designated for parking on Exhibit B attached hereto. To the extent practicable, Permittee shall use its best efforts to encourage ride-sharing, the use of shuttle busses or other pooled-means of transportation to and from the Premises.

**7. Alterations.** Except as otherwise expressly provided herein, Permittee shall not construct or place any temporary or permanent structures or improvements in, on, under or about the Premises, nor shall Permittee make any alterations or additions to any of existing structures or improvements on the Premises, unless Permittee first obtains Authority's prior written consent, which Authority may give or withhold in its sole and absolute discretion.

**8. Permit Fees.** In consideration of the public benefit that Permittee's service provides to the Island residents and tenants, the Authority waives any permit fees associated with use of this space.

**9. Term of Permit.** The privilege conferred to Permittee pursuant to this Permit shall commence on June 1, 2007 and shall automatically expire on November 30, 2007. Moreover, if the Master Lease terminates for any reason whatsoever, this Permit shall automatically terminate.

**10. Compliance with Laws.** Permittee shall, at its expense, conduct and cause to be conducted all activities on the Premises allowed hereunder in a safe and reasonable manner and in compliance with all laws, regulations, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act) whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Premises any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that Authority is entering into this Permit in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Permittee further understands and agrees

that no approval by Authority for purposes of this Permit shall be deemed to constitute approval of any federal, state, Authority or other local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals at Permittee's sole cost or limit in any way Authority's exercise of its police powers. Without limiting the foregoing, before beginning any work in the Premises, Permittee shall obtain any and all permits, licenses and approvals (collectively, "approvals") of all regulatory agencies and other third parties that are required to commence and complete the permitted work.

**11. Security and Permits.** In addition to the Permit Fee described in Section 8 above, Permittee shall pay all cost of providing the security services and obtaining the permits described on Exhibit E attached hereto.

**12. Surrender.** Upon the expiration of this Permit, Permittee shall surrender the Premises in the same condition as received, free from hazards and clear of all debris. At such time, Permittee shall remove all of its property from the Premises permitted hereunder, and shall repair, at its cost, any damage to the Premises caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.

### **13. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION**

**13.1. Release and Waiver of Claims.** Permittee, on behalf of itself and Permittee's Agents, covenants and agrees that the Authority shall not be responsible for or liable to Permittee for, and, to the fullest extent allowed by any Laws, Permittee hereby waives all rights against the Authority and releases them from, any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses"), including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the buildings thereon due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Authority (except as provided in Section 13.1(a) below). Without limiting the generality of the foregoing:

(a) Without limiting any other waiver contained herein, Permittee on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Authority from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Authority's decision to allow Permittee to use the Premises, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Authority.

(b) Permittee covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Authority any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 13.1.

(c) In executing these waivers and releases, Permittee has not relied upon any representation or statement other than as expressly set forth herein.

(d) Permittee had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such

facts. These waivers and releases are intended to be final and binding on Permittee regardless of any claims of mistake.

**(e) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:**

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

**13.2. Acknowledgment.** Permittee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Permit.

**13.3. Permittee's Indemnity.** Permittee, on behalf of itself and Permittee's Agents, shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Authority from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of any building located on the Premises due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Permittee or Permittee's Agents or Permittee's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Permittee's Agents and Permittee's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Permittee in the observation or performance of any of the terms, covenants or conditions of this Permit to be observed or performed on Permittee's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Permittee, Permittee's Agents or Permittee's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, (f) any construction or other work undertaken by Permittee on or about the Premises whether before or during the Term of this Permit; or (g) any acts, omissions or negligence of Permittee, Permittee's Agents or Permittee's Invitees, or of any trespassers, in, on or about the Premises or any alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Permit and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Authority. Notwithstanding the foregoing, Permittee's obligations to indemnify the Authority under this Section 13.3 shall remain in full force and effect regardless of whether or not the Authority's decision to permit the Premises to the Permittee, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Authority. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any Loss. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by Authority and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or sooner termination of this Permit. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to this Section 13.3, Permittee shall have no obligation to repair, restore or reconstruct the Premises (or to pay

for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

#### **14. INSURANCE**

**14.1. Permittee's Insurance.** Permittee shall procure and maintain throughout the Term of this Permit and pay the cost thereof the following insurance:

(a) Worker's Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Host Liquor Liability, Personal Injury, Broad Form Property Damage, Products and Completed Operations; and

(c) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Permittee uses, or causes to be used, any automobiles in connection with its use of the Premises.

(iii) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Permittee uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

**14.2. General Requirements.** All insurance provided for under this Permit shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Authority.

(a) Should any of the required insurance be provided under a claims-made form, Permittee shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of one (1) year beyond the expiration or termination of this Permit, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Permit, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Permittee as the insured and the City and County of San Francisco, the Treasure Island Development Authority, their officers, agents, and employees as an additional insured.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of

the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

**14.3. Proof of Insurance.** Permittee shall deliver to Authority certificates of insurance in form and with insurers satisfactory to Authority, evidencing the coverages required hereunder, on or before the commencement date of this Permit, together with complete copies of the policies promptly upon Authority's request. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, Authority may, at its option, procure the same for the account of Permittee, and the cost thereof shall be paid to Authority within five (5) days after delivery to Permittee of bills therefor.

**14.4. No Limitation on Indemnities.** Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations herein or any of Permittee's other obligations or liabilities under this Permit.

**14.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Permit, Authority may elect in Authority's sole and absolute discretion to terminate this Permit upon the lapse of any required insurance coverage by written notice to Permittee.

**14.6. Permittee's Personal Property.** Permittee shall be responsible, at its expense, for separately insuring Permittee's Personal Property.

**14.7. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Authority and Permittee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Permittee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Permittee shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Authority or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

**15. No Assignment.** This Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred by Permittee under any circumstances

**16. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**17. Non-Discrimination.** Permittee shall not, in the operation and use of the Premises, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, gender identity, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapters 12B and 12C of the San Francisco Administrative Code, relating to nondiscrimination

by parties contracting with the City and County of San Francisco, are incorporated herein by reference and made a part hereof as though fully set forth herein. Permittee agrees to comply with all of the provisions of such Chapters 12B and 12C that apply to parties contracting with the City and County of San Francisco.

**18. Tropical Hardwoods and Virgin Redwood.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood product.

**19. No Tobacco Advertising.** Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority, including the property which is the subject of this Permit. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

**20. Security Deposit.** Not Applicable.

**21. Rules and Regulations.** In connection with the Permittee's use hereunder, Permittee shall comply with the Rules and Regulations attached hereto as Exhibit F.

**22. General Provisions.** (a) This Permit may be amended or modified only by a writing signed by Authority and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (e) Time is of the essence. (f) This Permit shall be governed by California law and Authority's Charter. (g) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of Authority shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (h) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (i) Permittee may not record this Permit or any memorandum hereof. (j) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (k) Any sale or conveyance of the property burdened by this Permit by Authority shall automatically revoke this Permit. (l) This Permit may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**PERMITTEE:**  
**Chicken Hooray, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**TREASURE ISLAND  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

Mirian Saez

Director of Island Operations

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA,**  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

EXHIBIT A

MASTER LICENSE

The Master Lease between the United States of America and the Treasure Island Development Authority for the Event Venues Area at Naval Station Treasure Island, dated September 4, 1998, can be made available upon request.

**EXHIBIT B**

**DESCRIPTION OF PREMISES**

All that certain real property located in San Francisco County, California, described as follows:

EXHIBIT C

COVER PAGE OF SEISMIC REPORT

The Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions report, prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, dated August 1995, can be made available upon request.

EXHIBIT D

DATES AND TIMES OF USE

CHAPEL PARKING LOT USE

June 7, 2007	2:00PM to 9:00PM
June 14, 2007	2:00PM to 9:00PM
June 21, 2007	2:00PM to 9:00PM
June 28, 2007	2:00PM to 9:00PM

July 5, 2007	2:00PM to 9:00PM
July 12, 2007	2:00PM to 9:00PM
July 19, 2007	2:00PM to 9:00PM
July 26, 2007	2:00PM to 9:00PM

August 2, 2007	2:00PM to 9:00PM
August 9, 2007	2:00PM to 9:00PM
August 23, 2007	2:00PM to 9:00PM
August 30, 2007	2:00PM to 9:00PM

September 6, 2007	2:00PM to 9:00PM
September 13, 2007	2:00PM to 9:00PM
September 20, 2007	2:00PM to 9:00PM
September 27, 2007	2:00PM to 9:00PM

October 4, 2007	2:00PM to 9:00PM
October 11, 2007	2:00PM to 9:00PM
October 18, 2007	2:00PM to 9:00PM
October 25, 2007	2:00PM to 9:00PM

November 1, 2007	2:00PM to 9:00PM
November 8, 2007	2:00PM to 9:00PM
November 15, 2007	2:00PM to 9:00PM
November 29, 2007	2:00PM to 9:00PM

## EXHIBIT E

### SECURITY SERVICES AND PERMITS

Permittee shall provide, at its expense, any and all additional security and police officers required for the event described in Section 5 as determined by the San Francisco Police Department. Permittee shall, at its expense, contract with the San Francisco Fire Department, EMS Division, for the provision of medical support during the hours of operation of the event.

Without limiting the generality of Section 10 regarding compliance with applicable laws, Permittee shall obtain any permits required by the San Francisco Fire Department, (ie. General Assembly, Tent, Open Flame, Propane, etc.), and the San Francisco Police Department and the San Francisco Entertainment Commission, (ie. Loudspeaker, Itinerant Show, etc.) at its expense.

Permittee shall also obtain any permits required by the Department of Building Inspection, (ie. Electrical, etc.) and the Department of Public Health at its expense.

Permittee shall also obtain approval from the San Francisco Police Department for alcohol sales and must obtain a one day liquor license from the California Department of Alcoholic Beverage Control.

Permittee shall furnish copies of all such permits to the Treasure Island Development Authority prior to the event.

## EXHIBIT F

### RULES AND REGULATIONS

1. All rules and regulations set out in the Master License shall prevail.
2. No signs, advertisements, or notices shall be attached to, or placed on, the exterior or interior of the Building or elsewhere on the Property, without prior written approval of the Treasure Island Development Authority. Such signs must be removed within 24 hours of vacancy, or the termination of the approved event or activity, or at the request of the Treasure Island Development Authority.
3. Permittee's contractors, while on the Premises or Permittee's parking area, shall be subject to these Rules and Regulations, and will be subject to direction from the Treasure Island Development Authority and its agents, but will not be an agent or contractor of the Treasure Island Development Authority or its agents. Permittee's contractor shall be licensed by the State, insured and bonded at the amount requested by the Treasure Island Development Authority.
4. Permittee shall install and maintain at Permittee's expense, any life safety equipment required by governmental rules, regulations, or laws to be kept on the Premises.
5. All tents should be certified to withstand 70 mph winds and installed according to manufacturer's instructions. All tents and heating devices must comply with the fire and life safety regulations and be inspected and approved by the San Francisco Fire Department Inspector. Staking is only permitted in limited areas. An Excavation Permit must be obtained from the Navy Caretaker Site Office.







**AGENDA ITEM 8(c)**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of June 13, 2007**

**Subject:** Resolution Authorizing the Twenty Third Amendment to the Land and Structures Master Lease between the Authority and the Navy to Add Quarters 4,5,6,7,10,61,62,83,205,230 and 267 and Buildings 33A,B,C,D,E,F,G and H to the Leased Premises. (Consent Item)

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

**BACKGROUND**

On November 19, 1999, the Authority entered into Lease Agreement N6247499RP42P12 (the "Land and Structures Master Lease") with the United States Navy. The leased premises consist of land and structures throughout Treasure Island, including the Little League Baseball field and the Rubicon Corporation Yard. This amendment to the Land and Structures Master Lease would add Quarters 4,5,6,7,10,61,62,83,205,230 and 267 (the "Quarters") to the leased premises for a variety of uses, including support offices, studios and potentially temporary housing. This amendment would also add Buildings 33 A through H (the "Treasure Island Elementary School") to the leased premises, also for a variety of uses, including support offices and studios.

The Quarters are a collection of residential units located on Yerba Buena Island. They include the final group of historic single family residences to be leased to the Authority as well as Quarters 61 and 62 which are buildings with no historic significance. Following Base closure, the units underwent a remediation program to prevent potential exposure of building occupants to hazardous materials. The remediation program has been completed. The buildings are now suitable for occupancy.

In support of requests from the Treasure Island residents and the arts communities for support office, cultural facilities, and studio space on the islands, Project Staff has asked the Navy for the use of these facilities. Users would be responsible for making improvements and paying all costs of occupancy.

The Navy has agreed to Project Staff's request to add these premises to the Land and Structures Master Lease. Addition of these premises will provide Project Staff the opportunity to provide small spaces to support activities ranging from arts-oriented studios and facilities through activities for the Treasure Island community.

The Treasure Island Elementary School is leased to the San Francisco Unified School District ("SFUSD"). On May 14, 2007, the SFUSD gave notice to the Navy that they would terminate

the lease, effective July 1, 2007. The eight building complex contains a single occupant, the Boys & Girls Clubs of San Francisco.

In response to a request from Project Staff, the Navy has included the Treasure Island Elementary School in the Land and Structures Master Lease at no rent. Project Staff is negotiating the terms of a Sublease to retain the Boys & Girls Club and is engaged in active negotiations with the San Francisco Police Department for an overflow training facility in the complex. Project Staff is also in discussions with community members and others to include activities ranging from classrooms and studios through a community library in the complex.

### **RECOMMENDATION**

Approve Project Staff recommendation to authorize the Director of Island Operations to execute the Twenty Third Amendment to Navy Lease Agreement N6247499RP42P12 to add Quarters 4,5,6,7,10,61,62,83,205,230 and 267 and Buildings 33A,B,C,D,E,F,G and H to the Land and Structures Master Lease with the US Navy.

### **EXHIBITS**

- A – Form of Twenty Third Amendment to Navy Lease Agreement N6247499RP42P12
- B - Drawing showing land and buildings to be added to Premises

Prepared by Marc McDonald, Facilities Manager  
For Mirian Saez, Director of Island Operations

1 [Amendment to Land and Structures Master Lease]

2 **Resolution Authorizing the Twenty Third Amendment to the Land and Structures**  
3 **Master Lease between the Authority and the Navy to Add Quarters**  
4 **4,5,6,7,10,61,62,83,205,230 and 267 and Buildings 33A,B,C,D,E,F,G and H to the Leased**  
5 **Premises.**

6 WHEREAS, Former Naval Station Treasure Island is a military base located on  
7 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by  
8 the United States of America, acting by and through the Department of the Navy (the "Navy");  
9 and,

10 WHEREAS, The Base was selected for closure and disposition by the Base  
11 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
12 subsequent amendments; and,

13 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
14 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
15 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
16 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
17 conversion of the Base for the public interest, convenience, welfare and common benefit of  
18 the inhabitants of the City and County of San Francisco; and,

19 WHEREAS, The Authority and the Navy, entered into Lease Agreement  
20 N6247499RP42P12 dated November 19, 1999, for the Authority to use and rent out certain  
21 land and structures in certain areas of Treasure Island (the "Land and Structures Master  
22 Lease") at no rent; and,

23 WHEREAS, The Land and Structures Master Lease enables the Authority to sublease  
24 portions of the master leased area for interim uses and generate revenues to support the  
25 interim uses and the future redevelopment of the Base; and,

1 WHEREAS, The addition of the structures and surrounding lands known as Quarters  
2 4,5,6,7,10,61,62,83,205,230 and 267 and Buildings 33A,B,C,D,E,F,G and H to the lease  
3 premises under control of the Authority would be of benefit to the Project; and

4 WHEREAS, The Navy concurs with such addition of land and structures to the  
5 premises under the terms and conditions described in the Twenty Third Amendment to the  
6 Land and Structures Master Lease; Now, Therefore, Be It

7 RESOLVED, That the Board of Directors hereby authorizes the Director of Island  
8 Operations to enter into the Twenty Third Amendment To Lease Agreement  
9 N6247499RP42P12 Between the United States of America and the Treasure Island  
10 Development Authority in substantially the form attached hereto as Exhibit A.  
11  
12  
13

14 **CERTIFICATE OF SECRETARY**  
15

16 I hereby certify that I am the duly elected and acting Secretary of the Treasure  
17 Island Development Authority, a California nonprofit public benefit corporation, and  
18 that the above Resolution was duly adopted and approved by the Board of Directors  
19 of the Authority at a properly noticed meeting on June 13, 2007.  
20

21 \_\_\_\_\_  
22 **John Elberling,**  
23 **Secretary**  
24  
25



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**TWENTY THIRD AMENDMENT  
TO LEASE AGREEMENT N6247499RP42P12  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
TREASURE ISLAND DEVELOPMENT AUTHORITY**

THIS LEASE AMENDMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 2007, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 19 November 1999, entered into Lease Agreement N6247499RP42P12 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6247499RP42P12 are hereby amended to reflect the following changes;

1. Paragraph 1 **LEASED PREMISES** add the following:

"Use of Quarters 4, 5, 6, 7, 10, 61, 62, 83, 205, 230, 267 and Buildings 33 A-H for non-residential use only"

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

TREASURE ISLAND DEVELOPMENT  
AUTHORITY

\_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY









**23<sup>rd</sup> Amendment to Land and  
Structures Master Lease**



## 23<sup>rd</sup> Amendment to Land and Structures Master Lease









**AGENDA ITEM 8(d)**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of June 13, 2007**

**Subject:** Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with Toolworks, Inc., to Provide Janitorial Services Commencing July 1, 2007 and Expiring on June 30, 2008. (Consent Item)

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

**BACKGROUND**

Toolworks, Inc. ("Toolworks"), a California nonprofit public benefit corporation and a member organization of the Treasure Island Homeless Development Initiative ("TIHDI"), provides training and employment development services that increase economic opportunities for economically-disadvantaged people with disabilities. Most of Toolworks' trainees are homeless. Trainees are recruited through the TIHDI Job Broker Program and through the Homeless Employment Collaborative. One of Toolworks' programs is contractual janitorial services. The Treasure Island Development Authority Purchasing Policy and Procedures authorize non-competitive negotiations for contracts that are in furtherance of the Homeless Assistance Agreement between the Authority and TIHDI. Therefore, the janitorial services contract with Toolworks has been awarded on a non-competitive negotiated basis.

Toolworks has developed a specific training program for Treasure Island. Toolworks has one fulltime supervisor dedicated to Treasure Island. This person trains and supervises the work of four trainees who work five hours a day, five days a week for 10 weeks. The trainees are then assisted in finding fulltime janitorial jobs. Toolworks gives priority placement in this program to Treasure Island residents.

Janitorial services are required for the Treasure Island Project offices and the special event venues. Since the event venues often are booked for both Saturdays and Sundays, janitorial services are needed seven days a week. The proposed contract with Toolworks provides janitorial services to the Project Offices, offices of the John Stewart Company, the Treasure Island Homeless Development Initiative, the Department of Public Works and the San Francisco Police Department as well as cleaning of the Casa de la Vista and the Chapel. Routine services are for five days a week for an amount not to exceed Eight Thousand Seven Hundred and Fifty (\$8,750) per month or One Hundred and Five Thousand Dollars (\$105,000) for the period from July 1, 2007 through June 30, 2008. The contract also provides for \$45,000 for as-needed janitorial services.

## **RECOMMENDATION**

Staff recommends approval of the contract for janitorial services with Toolworks from July 1, 2007 through June 30, 2008 for an amount not to exceed \$150,000.

## **EXHIBITS**

A Professional Services Agreement between the Treasure Island Development Authority and Toolworks, Inc.

Prepared by Marc McDonald, Facilities Manager

For Mirian Saez, Director of Island Operations

[TOOLWORKS CONTRACT]

**RESOLUTION AUTHORIZING THE DIRECTOR OF ISLAND OPERATIONS TO EXECUTE  
A PROFESSIONAL SERVICES AGREEMENT WITH TOOLWORKS, INC. TO PROVIDE  
JANITORIAL SERVICES COMMENCING JULY 1, 2007 AND EXPIRING JUNE 30, 2008.**

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, The Base was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997 (the "Act"), which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968, the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and,

WHEREAS, On February 6, 1998, the Board of Supervisors adopted Resolution No. 43-98 approving the designation of the Authority as a redevelopment agency for Treasure Island and Yerba Buena Island; and,

WHEREAS, The Authority has negotiated and endorsed a proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property (the "Homeless Assistance Agreement") with the Treasure Island Homeless Development Initiative ("TIHDI"), a consortium of California nonprofit corporation organized to utilize the resources of the Base to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, The Authority wishes to support TIHDI pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, Toolworks, Inc. is a California nonprofit corporation and a member organization of TIHDI, and Toolworks, Inc. has represented and warranted that it is qualified to perform the janitorial and other building maintenance services required by the Authority as set forth under the proposed contract; and,

WHEREAS, The Authority's purchasing policy and procedures authorize non-competitive negotiations for contracts in furtherance of the Homeless Assistance Agreement; and,

WHEREAS, On September 1, 2004, the Authority and Toolworks, Inc. entered into an agreement for janitorial and other building maintenance services on the former Base (the "Original Agreement"); and,

1 WHEREAS, On June 8, 2005, the Authority authorized a First Amendment to the  
2 Original Agreement to modify the scope of work and budget for services for a 12 month period  
3 that expired on June 30, 2006; and,

4 WHEREAS, On July 26, 2006, the Authority authorized a Second Amendment to the  
5 Original Agreement to modify the scope of work and budget for services for a 12 month period  
6 that will expire on June 30, 2007; and,

7 WHEREAS, The Authority has negotiated with Toolworks, Inc. to reach agreement on  
8 the terms of a new Professional Services Agreement (the "Agreement") in an amount not to  
9 exceed One Hundred Fifty Thousand Dollars (\$150,000), which (i) describes the scope of  
10 work for the services shown in Appendix B-1 of the Agreement attached to this resolution as  
11 Exhibit A, and (ii) establishes the term of the Agreement for a period of 12 months  
12 commencing July 1, 2007 and expiring on June 30, 2008; now, therefore be it  
13

14 RESOLVED, That the Authority hereby authorizes the Director of Island Operations to  
15 execute the Agreement with Toolworks effective July 1, 2007, for an amount not to exceed  
16 One Hundred and Fifty Thousand dollars (\$150,000), in substantially the form attached hereto  
17 as Exhibit A.

#### 18 CERTIFICATE OF SECRETARY

19  
20 I hereby certify that I am the duly elected and acting Secretary of the Treasure  
21 Island Development Authority, a California nonprofit public benefit corporation, and  
22 that the above Resolution was duly adopted and approved by the Board of Directors  
23 of the Authority at a properly noticed meeting on June 13, 2007.

24 John Elberling, Secretary  
25





RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT



**Treasure Island Development Authority  
410 Avenue of the Palms  
Treasure Island  
San Francisco, California 94130**

**Agreement between the Treasure Island Development Authority and  
TOOLWORKS, INC.**

This Agreement is made this 1<sup>ST</sup> day of **July**, 2007, in the City and County of San Francisco, State of California, by and between: Toolworks, Inc., a California nonprofit public benefit corporation, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a nonprofit public benefit corporation hereinafter referred to as the "Authority," acting by and through its Director of Island Operations, hereinafter referred to as the "Director."

**Recitals**

WHEREAS, the **Treasure Island Development Authority** ("Authority") wishes to utilize the resources of the former Naval Station Treasure Island to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, the Authority wishes to procure janitorial services at Naval Station Treasure Island; and,

WHEREAS, Janitorial and other building maintenance services are identified in the Homeless Component of the Treasure Island Reuse Plan as one of the economic development opportunities available to assist homeless and other economically disadvantaged San Franciscans; and,

WHEREAS, The Authority's Purchasing Policy and Procedures authorize non-competitive negotiations for contracts that are in furtherance of the Homeless Assistance Agreement between the Authority and the Treasure Island Homeless Development Initiative ("TIHDI") including any TIHDI member organizations for contracts for economic development opportunities identified in the Reuse Plan; and,

WHEREAS, Contractor, a member organization of TIHDI, provides janitorial services that increase economic opportunities for economically-disadvantaged people and people with disabilities; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by Authority as set forth under this Contract;

Now, THEREFORE, the parties agree as follows:

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco (the "City"). Charges will accrue only after prior written authorization certified by the Controller, and the amount of Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority budget decisions are subject to the discretion of the Mayor and the Authority's Board of Directors, the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**2. Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from **July 1, 2007 to June 30, 2008**.

**3. Effective Date of Agreement**

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

**4. Services Contractor Agrees to Perform**

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

**5. Compensation**

Compensation shall be made in monthly payments on or before the **Tenth** day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Island Operations, in his or her sole discretion, concludes has been performed as of the **Final** day of the immediately preceding month. In no event shall the amount of this Agreement exceed **One Hundred and Fifty Thousand Dollars and no cents (\$150,000)**. The breakdown of costs

associated with this Agreement appears in Appendix B, "General Services & Budget," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by **the Authority** as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

#### **6. Guaranteed Maximum Costs**

a. The Authority's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the Authority are not authorized to request, and the Authority is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the Authority are not authorized to offer or promise, nor is the Authority required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

#### **7. Payment; Invoice Format**

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by Authority to Contractor shall be subject to audit by City.

Payment shall be made by Authority to Contractor at the address specified in the section entitled "Notices to the Parties."

#### **8. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the

contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**9. Deleted by Agreement of Parties.**

**10. Taxes**

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the Authority to enable the Authority to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **11. Payment Does Not Imply Acceptance of Work**

The granting of any payment by Authority, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and in such case must be replaced by Contractor without delay.

## **12. Qualified Personnel**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

## **13. Responsibility for Equipment**

Authority shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority.

## **14. Independent Contractor; Payment of Taxes and Other Expenses**

### **a. Independent Contractor**

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with Authority, nor be entitled to participate in any plans, arrangements, or distributions by Authority pertaining to or in connection with any retirement, health or other benefits that Authority may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**b. Payment of Taxes and Other Expenses.**

Should Authority, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

**15. Insurance**

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the US Navy, the Treasure Island Development Authority, and the City and County of San Francisco, their Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to Authority of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

**Treasure Island Development Authority  
410 Avenue of the Palms  
Treasure Island  
San Francisco, CA. 94130  
Attn: Director of Island Operations**

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to Authority certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to Authority, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor hereunder.

## **16. Indemnification**

Contractor shall indemnify and save harmless Authority and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by Authority or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any claims against the Authority.

In addition to Contractor's obligation to indemnify Authority, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

Contractor shall indemnify and hold Authority harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

### **a. General Indemnity**

To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the Authority, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

### **b. Limitations**

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

#### **c. Copyright Infringement**

Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the Authority, or any of its boards, commissions, officers, or employees of articles or services to be supplied in then performance of Contractor's services under this Agreement.

#### **17. Incidental and Consequential Damages**

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that Authority may have under applicable law.

#### **18. Liability of Authority**

AUTHORITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

#### **19. Liquidated Damages**

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, Authority will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of **Five Hundred Dollars (\$500)** per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that Authority will incur based on the delay,

established in light of the circumstances existing at the time this contract was awarded. Authority may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Contractor's failure to deliver to Authority within the time fixed or such extensions of time permitted in writing by Purchasing.

## **20. Default; Remedies**

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **21. Termination for Convenience**

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that Authority designates to be completed prior to the date of termination specified by Authority.

(7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which

services or work Authority has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to Authority against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

## **22. Rights and Duties upon Termination or Expiration**

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

### **23. Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

### **24. Proprietary or Confidential Information of Authority**

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority. Contractor agrees that all information disclosed by Authority to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

### **25. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, or by fax, and shall be addressed as follows:

To Authority: **Treasure Island Development Authority**  
**410 Avenue of the Palms**  
**Treasure Island**  
**San Francisco, CA. 94130**  
**Attn: Mirian Saez, Director of Island Operations**  
**Fax: (415) 274-0299**

To Contractor: **Toolworks, Inc.**  
**25 Kearny Street, Suite 400**

San Francisco, CA. 94108  
Attn: Steven Crabiell, Executive Director  
FAX (415)733-0991

Any notice of default must be sent by registered mail.

**26. Ownership of Results**

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**27. Works for Hire**

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**28. Audit and Inspection of Records**

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority by this Section.

**29. Subcontracting**

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority in writing. Neither party shall, on the basis of this

Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

### **30. Assignment**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement.

### **31. Non-Waiver of Rights**

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

### **32. Earned Income Credit (EIC) Forms**

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Authority may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

### **33. Local Business Enterprise Utilization; Liquidated Damages**

**a. The LBE Ordinance**

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle Authority, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

**b. Compliance and Enforcement**

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

**34. Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate**

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**b. Subcontracts**

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits**

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract**

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**e. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each

person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**35. MacBride Principles—Northern Ireland**

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**36. Tropical Hardwood and Virgin Redwood Ban**

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**37. Drug-Free Workplace Policy**

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

**38. Resource Conservation**

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**39. Compliance with Americans with Disabilities Act**

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**40. Sunshine Ordinance**

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

#### **41. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority to terminate and/or not renew the Agreement, partially or in its entirety.

#### **42. Limitations on Contributions**

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **43. Requiring Minimum Compensation for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour for the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then that employee is covered by San Francisco's Minimum Wage Ordinance, which is Chapter 12R of the Administrative Code. As of January 1, 2007, Chapter 12R's minimum wage is \$9.14 per hour.

b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Authority, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Authority, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative

Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### **44. Requiring Health Benefits for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan

option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Authority shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Authority.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### **45. First Source Hiring Program**

##### **a. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

##### **b. First Source Hiring Agreement**

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**c. Hiring Decisions**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**d. Exceptions**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**e. Liquidated Damages**

Contractor agrees:

(1) To be liable to the Authority for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the Authority's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the Authority and the public which is significant and substantial but extremely difficult to quantify; that the harm to the Authority includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the Authority suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the Authority and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages

that the Authority suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the Authority by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the Authority is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the Authority's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**f. Subcontracts**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**46. Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the Authority may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new Authority or City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

#### **47. Preservative-treated Wood Containing Arsenic**

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **48. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

#### **49. Administrative Remedy for Agreement Interpretation**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director who shall decide the true meaning and intent of the Agreement.

#### **50. Agreement Made in California; Venue**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

#### **51. Construction**

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

## **52. Entire Agreement**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

## **53. Compliance with Laws**

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

## **54. Services Provided by Attorneys**

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

## **55. Supervision of Minors**

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor.

Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

#### **56. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

#### **57. Protection of Private Information**

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the Authority may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

#### **58. Graffiti Removal**

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the Authority's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the Authority, the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

#### **59. Food Service Waste Reduction Requirements**

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, Authority will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that Authority will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Contractor's failure to comply with this provision.

#### **60. Slavery Era Disclosure**

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is

greatest as determined by the Director. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

**61. Deleted by Agreement of Parties**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

<b>TREASURE ISLAND DEVELOPMENT AUTHORITY</b>	<b>CONTRACTOR</b>
	<b>TOOLWORKS, INC.</b>
By: _____ <b>Mirian Saez, Director of Island Operations Treasure Island</b>	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
Approved as to Form:	I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging
Dennis J. Herrera City Attorney	San Francisco companies to do business with corporations that abide by the MacBride Principles.
By: _____ Deputy City Attorney	_____ STEVEN CRABIEL, EXECUTIVE DIRECTOR, 25 KEARNY STREET, SUITE 400 SAN FRANCISCO, CA 94108 FEIN 94-2493384 PHONE – (415) 733-0330 FAX (415)733-0991  City vendor number: 46565

#### Appendices

- A: Services to be Provided by Contractor  
B: Calculation of Charges

**Appendix A**  
**Services to be Provided by Contractor**

## Appendix B

### General Services & Budget



**TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**Toolworks**  
**Scope of Work**

**Site:** Administration Building at 410 Avenue of the Palms,  
Chapel,  
Casa de la Vista,  
Guard House

**Contact:** Project Manager - Mike Oxley, 415-956-1121  
**Administrative:** Supervisor - Rob Arbo, 415-733-0990 ext 652

**Hours of Operation:** Monday through Friday, 7 a.m.-12:00 noon

**Keys:** Project Manager and Program Coordinator have keys to the office, and the file cabinet. All other keys are locked in the Toolworks office cabinet. Keys include:

- Paper towel dispensers
- Toilet paper dispensers
- Administration Building: Building Master Key
- Guard House
- Casa de la Vista
- Chapel

Under the supervision of the Project Manager (Mike Oxley) - routine work is performed by a crew from 7 a.m.-12 p.m. daily, Monday through Friday, with the exception of holidays, as observed by the City and County of San Francisco. A courtesy of 48 hour notice is requested, whenever possible, for the venues which are not routinely cleaned or for additional cleaning needs of the above venues.

## **DAILY TASKS**

*(Subject to change with prior notice)*

### **First Floor**

John Stewart Office  
Treasure Island Homeless Development Initiative Offices

- **Duties**
  - Trash*
    - Collect trash from small cans into one large clean bag*
    - Replace trash liners as necessary*
    - Dust furniture and horizontal surfaces below 72 inches*
    - Empty recycling containers into appropriate recycling bin*
    - Vacuum daily*

## **First Floor Restrooms**

### Women's Restroom

*Sweep and damp mop floor*  
*Clean sink and counter with general purpose clean*  
*Clean mirror with glass cleaner*  
*Disinfect toilets*  
*Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems*  
*Toilet paper*  
*Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office*  
*Paper dispensers*  
*Spot clean walls*  
*Reports all incidents of leaks or obvious maintenance issues to management*

### Men's Restroom

*Sweep floor and damp mop floor.*  
*Clean sink with general purpose cleaner.*  
*Clean mirror with glass cleaner.*  
*Clean urinals and toilets with cleanser and disinfectant*  
*Periodically check to see that all toilets are functioning. If clogged, use plunger or inform Project Manager for serious problems.*  
*Toilet paper*  
*Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office.*  
*Paper dispensers*  
*Spot clean walls*  
*Reports all incidents of leaks or obvious maintenance issues to management*

## **Second Floor**

Treasure Island Development Authority Offices  
Room 201 (Wine Valley Catering)

*Trash*  
*Collect trash from small cans into one large clean bag.*  
*Replace trash liners as necessary*  
*Empty recycling containers into appropriate recycling bin*  
*Vacuum daily*  
*Dust furniture and horizontal surfaces below 72 inches*

## **Second Floor Restrooms**

*Sweep and damp mop floor*  
*Clean sink and counter with general purpose clean*  
*Clean mirror with glass cleaner*

*Disinfect toilets*

*Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems*

*Toilet paper*

*Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office*

*Paper dispensers*

*Spot clean walls*

*Reports all incidents of leaks or obvious maintenance issues to management*

### **Miscellaneous daily service**

Policing of Administration Building will be done for debris and trash.

Janitorial services for the front Gate Guardhouse

*Trash*

*Collect trash from small cans into one large clean bag*

*Replace trash liners as necessary*

*Dust furniture and horizontal surfaces below 72 inches*

*Empty recycling containers into appropriate recycling bin*

*Vacuum daily*

### **Per special request**

The Casa de la Vista: Perform janitorial services as requested but at least once per week. *Duties as assigned by Special Events Director (TIDA). As time permits, may include any combination of the following:*

*Cleaning of bay windows*

*Carpet cleaning/ spot cleaning*

*Polish brass on bar*

*Vacuum*

*Trash*

*Collect trash from small cans into one large clean bag*

*Replace trash liners as necessary*

*Police exterior of Casa for large debris – sweep as needed*

*Bathrooms (2)*

*Sweep and damp mop floor*

*Clean sink and counter with general purpose clean*

*Clean mirror with glass cleaner*

*Disinfect toilets*

*Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems*

*Toilet paper*

*Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office*

*Paper dispensers*

*Spot clean walls*

*Reports all incidents of leaks or obvious maintenance issues to management*

*Kitchen*

*Clean and polish grill and stove*

*Clean and polish all horizontal surfaces*

*Sweep and mop floors*

The Chapel: Perform janitorial services as requested, but at least once per week ***Duties as assigned by Special Events Director (TIDA)*** *As time permits, may include any combination of the following:*

*Vacuum all rugs*

*Sweep and damp mop all hard floors*

*Polish pews*

*Cleaning interior windows*

*Dust all furniture and horizontal surfaces below 72 inches*

*Trash*

*Collect trash from small cans into one large clean bag*

*Replace trash liners as necessary*

*Police exterior of Chapel for large debris – sweep as needed*

*Bathrooms (4)*

*Sweep and damp mop floor*

*Clean sink and counter with general purpose clean*

*Clean mirror with glass cleaner*

*Disinfect toilets*

*Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems*

*Toilet paper*

*Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office*

*Paper dispensers*

*Spot clean walls*

Fog Watch: Perform janitorial services ***as assigned by Special Events Director (TIDA)***. *As time permits, may include any combination of the following:*

*Cleaning of bay windows*

*Carpet cleaning/ spot cleaning*

*Vacuum*

*Trash*

*Collect trash from small cans into one large clean bag*

*Replace trash liners as necessary*

*Police exterior of Fog Watch for large debris – sweep as needed*

*Bathrooms (2)*

*Sweep and damp mop floor*

*Clean sink and counter with general purpose clean*

*Clean mirror with glass cleaner*

*Disinfect toilets*

*Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems*

*Toilet paper*

*Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office*

*Paper dispensers*

*Spot clean walls*

*Kitchen/ Bar*

*Clean and polish grill and stove*

*Clean and polish all horizontal surfaces*

*Sweep and mop floors*

**Nimitz House: Perform janitorial services as requested/directed by TIDA *As time permits, may include any combination of the following:***

*Sweep and damp mop all floors*

*Wash windows as directed*

*Sweep and damp mop floors*

*Dust furniture and horizontal surfaces below 72 inches*

*Bathrooms (as directed by TIDA)*

*Clean sink and counter with general purpose clean*

*Clean mirror with glass cleaner*

*Disinfect toilets*

*Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems*

*Toilet paper*

*Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office*

*Paper dispensers*

*Spot clean walls*

**Or other duties as assigned by TIDA**

**Nimitz Conference Center: Perform janitorial services as requested/directed by TIDA *As time permits, may include any combination of the following:***

*Sweep and damp mop all floors*

*Wash windows as directed*

*Sweep and damp mop floors*

*Dust furniture and horizontal surfaces below 72 inches*

*Bathrooms (as directed by TIDA)*

*Clean sink and counter with general purpose clean*

*Clean mirror with glass cleaner*

*Disinfect toilets*

*Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems*

*Toilet paper*

*Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office*

*Paper dispensers*

*Spot clean walls*

*Reports all incidents of leaks or obvious maintenance issues to management*

Or other duties as assigned by TIDA

Periodic work

Once a week:

*Damp mop entrance lobbies and stairways Building 1*  
*Spot clean carpets Casa de La Vista*  
*Sweep/vacuum stairways of Building 1*

Once a month:

*Damp mop all hard floors in Building One traffic areas*  
*Thorough vacuuming on used areas carpets*  
*Thorough dusting*  
*Polish brass hand railings on staircases*

Quarterly:

*Polish brass entrance doors Building 1*  
*Casa de la Vista and the Chapel-polish all brass*  
*Dust mop hard floors*  
*Spot clean carpets Casa de La Vista*

AS NEEDED or WHENEVER TIME PERMITS

*Sweep the outside sidewalk of Building One*  
*Sweep and damp mop stair wells inside Building One*  
*Shine chrome of banisters with the window cleaner*  
*Wash windows of doors*  
*Air Traffic Control Tower, sweep, clean, dust*

\* Spot cleaning is defined as a small number of spots, each of which is no bigger than two inches in diameter.

**TASKS SPECIFICALLY EXCLUDED ARE**

Carpet cleaning  
Upholstery  
Cleaning of ceiling light fixtures  
Changing light bulbs  
Window Washing

*ADDITIONAL SERVICES can be negotiated on an as needed basis at a rate of \$30.00/hour. Additional work that is performed in the evenings and/or weekends is at a rate of \$30.00/hour.*

*ADDITIONAL ROUTINE WORK to the Administration Building for areas not outlined above can be negotiated at a rate of \$0.13 per square foot per month.*

*Examples:* San Francisco Department of Public Works Offices  
Buff/shine floors of Building 1

## GENERAL SERVICES & BUDGET

For an amount not to exceed \$8,750 per month, or \$105,000 for the period from July 1, 2007 through June 30, 2008, Contractor will provide:

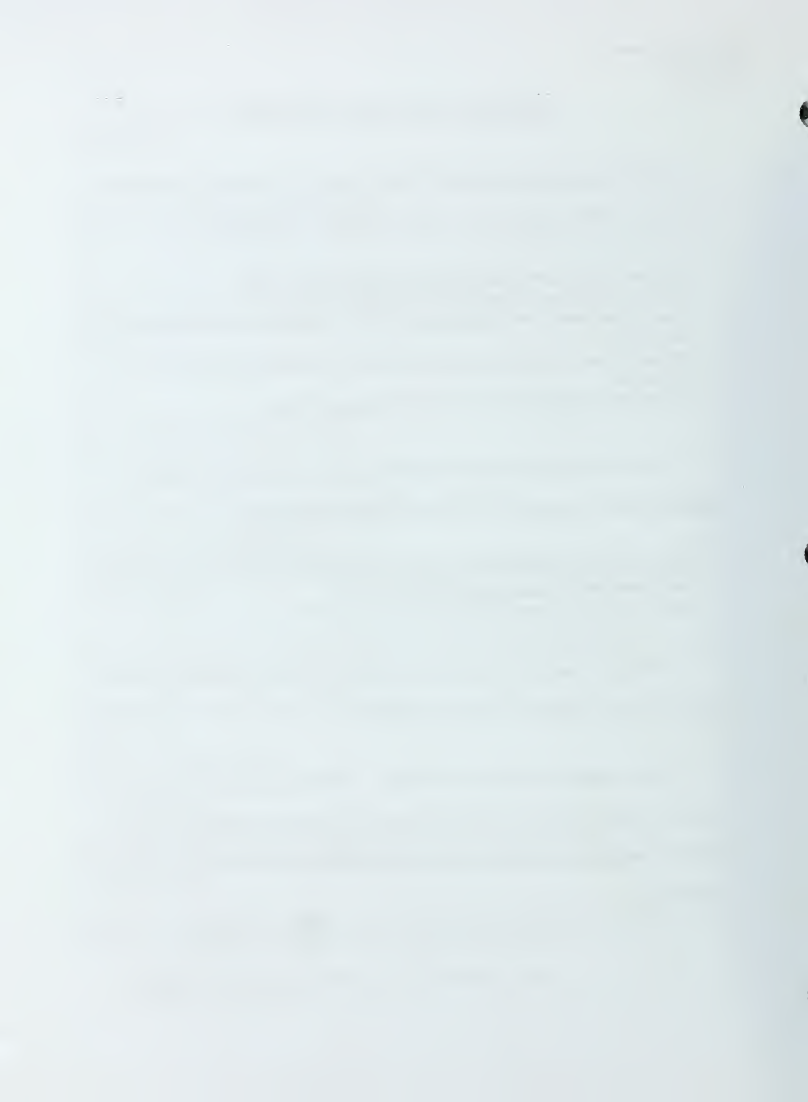
- Routine janitorial services as defined in the Scope of Work
- Cleaning equipment, materials and supplies
- Soap, toilet paper, hand towels, seat covers for all restrooms and kitchens in all venues
- Uniform soap and paper goods dispensers for all restrooms and kitchens in all venues
- Transport of equipment and personnel among venues

For an amount not to exceed \$25,000 per year at the specific request of Special Events Coordinator, or Director of Island Operations:

- Carpet cleaning @ \$40.00 per 500 square feet (500 sf minimum service area)
- Additional window cleaning @ \$30.00 per hour
- Additional janitorial services @ \$30.00 per hour

Contingency fee for an amount not to exceed \$20,000, to be granted solely upon approval of Director of Island Operations.

Contract Value not to exceed \$150,000; Should the Director of Island Operations wish, however, to add routine work for areas not currently under the Scope of Work, the work will be provided for an additional \$0.13 per square foot per month.







AGENDA ITEM 8(e)  
Treasure Island Development Authority  
City and County of San Francisco  
Meeting of June 13, 2007

**Subject:** Interim Subleasing Policy for Treasure Island Development Authority

**Contact** Mirian Saez, Director of Island Operations

**Phone** (415) 274-0665

**BACKGROUND**

During the interim period preceding transfer of the real property from the US Navy to the Treasure Island Development Authority (the "Authority"), the Authority earns operating revenue by subleasing property leased from the US Navy. On May 9, 2007, at the regular meeting of the Board of Directors ("Board") for the Authority, Project Staff presented a Draft Subleasing Policy ("Draft Policy") to solicit comments regarding establishment of rules and procedures for subleasing real property during the interim period.

The Draft Policy described how all subleasing and sublease renewals would be conducted utilizing a standardized procedure with the objectives of (1) maximizing income and (2) ensuring transparency in the terms and conditions of subleasing transactions and agreements with third parties.

Project Staff solicited comments to the Draft Policy from the Board, the Real Estate Division for the City and County of San Francisco, the Mayor's Office of Base Reuse and other interested parties. In response to comments, Project Staff has amended the Draft Policy to enhance communications between Project Staff, the US Navy, the Treasure Island Homeless Development Initiative ("TIHDI") and the Mayor's Office of Base Reuse to assure that the proposed subtenants and the terms of the proposed tenancies are compatible with current and future commitments and plans.

The general terms of the new Interim Subleasing Policy are:

- All Subleases will be on the Authority's **Standard Form Sublease**, as such form is updated from time to time by the City Attorney's Office.
- Uses will be approved in advance by the Authority.
- **Business Terms** will fall within the following general parameters:
  - **Term.** The term of the sublease shall be no greater than the term provided the Authority in its master lease with the US Navy.
  - **Legal Terms and Conditions.** Subleases and amendments to subleases that are not signed "as to form" by the City Attorney will be invalid and not binding against the Authority.
  - **Risk Management.** The Risk Manager for the City and County of San Francisco will establish all Insurance Requirements for all subleases.

- **Annual Rate Adjustments.** Each year, rental rates for current subtenant will be adjusted between 2% and 5%.
- **Minimum Rents.** The Authority will adopt **minimum rents** for all properties for sublease.
- **Security Deposit.** All Security Deposits shall be equal to at least two times the monthly base rental payment.
- The sublease may include **Concessions** as follows.
  - **Early Entry.** Up to a maximum of 30 days to prepare properties for occupancy.
  - **Rent Credit.** Allowed to make improvements to the premises.
  - **Paint and Carpet Allowance(s).** Allowed for cosmetic purposes.
- **Subtenant Obligations.**
  - Compliance with all **permitting and regulatory** requirements.
  - The Subtenant must be **creditworthy**.
- **Director Actions.** Prior to entering into a sublease, The Director of Island Operations shall review the tenant and tenancy with the US Navy, the Treasure Island Homeless Development Initiative and the Mayor's of Office Base Reuse to ensure compatibility of the tenancy with current and future obligations. Additionally, the Director of Island Operations will present a written description at each monthly meeting of the Authority describing all leasing activity.

## **RECOMMENDATION**

Project Staff recommends approval and adoption of the Interim Subleasing Policy. The Interim Subleasing Policy will delegate to the Director of Island Operations the ability to negotiate and execute subleases consistent with policies established by the Authority and report back to the Board of Directors the terms of subleases executed. The Interim Subleasing Policy will enhance the ability of Project Staff to negotiate effectively in the current competitive environment. Adoption of the Interim Subleasing Policy will establish the rules and procedures for subleasing real property during the interim period with the objectives of (1) maximizing income for the benefit of the Authority and (2) ensuring transparency in the terms and conditions of all transactions and agreements with third parties.

## **EXHIBITS**

- A. Treasure Island Development Authority Interim Subleasing Policy
- B. Multi-Tenant Sublease Form Document
- C. Minimum Rent Schedule

Prepared by Marc McDonald, Facilities Manager  
For Mirian Saez, Director of Island Operations

1 [Establishing an Interim Policy for Subleasing Real Property]

2 **Resolution to Approve and Adopt an Interim Subleasing Policy**

3 WHEREAS, Former Naval Station Treasure Island is a military base located on  
4 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by  
5 the United States of America ("the Federal Government"); and,

6 WHEREAS, The Base was selected for closure and disposition by the Base  
7 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
8 subsequent amendments; and,

9 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
10 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
11 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
12 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
13 conversion of the Base for the public interest, convenience, welfare and common benefit of  
14 the inhabitants of the City and County of San Francisco; and,

15 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
16 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
17 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
18 as a redevelopment agency under the California Redevelopment Law with authority over the  
19 Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions  
20 of the Base which are subject to Tidelands Trust, vested in the Authority the authority to  
21 administer the public trust for commerce, navigation and fisheries as to such property; and,

22 WHEREAS, On March 11, 1998, pursuant to Resolution No. 98-10-3/11, the Board of  
23 Directors of the Treasure Island Development Authority adopted The "Treasure Island  
24 Development Authority Rules and Procedures for Transfer and Use of Real Property" (the  
25 "Rules and Procedures"), such Rules and Procedures establishing the specific rules and

1 procedures for the transfer of all or any portion of the real property located on the closed  
2 Naval Base Treasure Island; and,

3 WHEREAS, The Rules and Procedures, while appropriate to the circumstances and  
4 conditions affecting transfer of real property on the Base in 1998, are inappropriate to current  
5 conditions which include (1) the need to maximize revenue for distressed properties under  
6 management, (2) the need to facilitate timely completion of sublease transactions in a  
7 competitive environment, and (3) the need for transactions to be completed in a transparent  
8 and streamlined process which maximizes the ability of the Authority to manage limited  
9 resources; and,

10 WHEREAS, An Interim Subleasing Policy which standardizes and streamlines the  
11 subleasing process while assuring that there is consistency, transparency and full disclosure  
12 to the Authority and the public by the use of a pre-approved body of subleasing parameters  
13 that will include a boilerplate sublease, use and business terms and minimum rental rates to  
14 guide Project Staff in sublease negotiations while assuring compliance with Board policy will  
15 be a benefit to the Project, the Authority and the public; Now, Therefore, Be It

16 RESOLVED, That the Board of Directors of the Treasure Island Development Authority  
17 approves and adopts an Interim Subleasing Policy in substantially the form attached as  
18 Exhibit A, and Be It,

19 FURTHER RESOLVED, That the Interim Subleasing Policy supersedes the "Treasure  
20 Island Development Authority Rules and Procedures for Transfer and Use of Real Property"  
21 adopted by the Authority on March 11, 1998, pursuant to Resolution No. 98-10-3/11, which  
22 shall have no further effect on the terms, conditions, rules and procedures for subleasing  
23 properties on the Base.

24  
25  
# # # #

1 CERTIFICATE OF SECRETARY

2 *I hereby certify that I am the duly elected and acting secretary of the Treasure*  
3 *Island Development Authority, a California nonprofit public benefit corporation, and*  
4 *that the above Resolution was duly adopted and approved by the Board of Directors of*  
5 *the Authority at the Properly noticed meeting on June 13, 2007.*  
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8 \_\_\_\_\_  
9 John Elberling, Secretary  
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## TREASURE ISLAND DEVELOPMENT AUTHORITY INTERIM SUBLEASING POLICY

During the interim period preceding transfer of the real property from the US Navy to the Treasure Island Development Authority (the "Authority"), the Authority earns operating revenue to support the policy goals and objectives of the City and the Authority by subleasing property leased from the US Navy. The purpose of the Authority's Interim Subleasing Policy is to establish the rules and procedures for subleasing real property during the interim period.

### I. POLICY STATEMENT

All subleasing and sublease renewals shall be conducted utilizing a standardized procedure with the objective of (1) maximizing income and (2) ensuring transparency in the terms and conditions of all transactions and agreements with third parties.

**Standardization** – To competitively position the Authority's commercial properties, the sublease process requires the use of standardized form leases, business terms and parameters. Parameters shall be reviewed and approved by the Authority from time to time for use by Project Staff. Exceptions to utilization of standardized forms and parameters shall be approved by the Authority in its sole and absolute discretion.

**Marketing** – Marketing shall be conducted in a public, open and transparent method that is intended to maximize exposure of the properties.

### II. SUBLEASE BUSINESS TERMS AND ALLOWANCES

- A. **Standard Form Sublease.** The subtenant will sign a standard form sublease with no changes except minor changes approved by the City Attorney. Any changes to the sublease which significantly alter the potential liabilities or the responsibilities of the Authority will require Authority approval.
- B. **Business Terms and Parameters.** The Business Terms of the sublease shall fall within the following general parameters:
  - 1) **Uses.** Uses of subleased properties shall be consistent with uses prescribed by the US Navy and uses assigned by the Authority; or, in the case of a multiple tenant property shall be similar to and/or compatible with the other uses in the property.
  - 2) **Term.** The term of the sublease shall be no greater than the term provided the Authority in its lease with the US Navy.

- 3) **Terms and Conditions.** The basic legal terms and conditions are incorporated into the terms of a boilerplate sublease approved by the City Attorney. Exceptions to the boilerplate terms and conditions will be approved by the City Attorney. Subleases and amendments to subleases that are not signed "as to form" by the City Attorney are invalid and not binding against either the Authority.
- 4) **Risk Management.** The Risk Manager for the City and County of San Francisco established all Insurance Requirements for all subleases. Exceptions to the standard Insurance Requirements shall be provided only by the Risk Manager and shall be in writing.
- 5) **Annual Rate Adjustments.** Each year, rental rates for current subtenants are adjusted between 2% and 5%, based on the change in the local Consumer Price Index, as well as general and local market conditions.
- 6) **Minimum Rents.** The sublease provides for **minimum rents** that are no lower than the rate for space of the category subleased, as shown on the **Minimum Rental Rate Schedule** adopted periodically by the Authority.
- 7) **Security Deposit.** Each subtenant shall provide the Authority a Security Deposit that is equal to at least two times the monthly base rent. The Security Deposit may be greater based on a review of risk factors for a subtenant.

**C. The sublease may include Allowances.**

- 1) **Early Entry.** The subtenant may take early occupancy, up to a maximum of 30 days, to make improvements to the property to prepare it for tenancy.
- 2) **Rent Credit.** Rent Credits may be allowed to make improvements to the premises. The value of Rent Credits cannot exceed 50% of Year One base rent. Rent Credits may be used to offset no more than 50% of the subtenant's base rent for any month.
- 3) **Paint and Carpet Allowance.** The quoted rate for full service office space assumes move-in space with good paint and carpeting. In the event a subtenant takes office space that does not meet the standard, in addition to Rent Credits for tenant improvements, the subtenant may be provided an allowance for paint and carpet up to a maximum of \$2.00 per square foot to make these cosmetic improvements to the premises.
- 4) **Limitations to Rent Credit and Paint and Carpet Allowances.** Either Rent Credit or Paint and Carpet Allowances may be used to reduce monthly base rent for a period that shall not exceed twelve months. In no event shall credits or allowances be used to reduce monthly base rent by an amount greater than

50% of the monthly base rent for the month. Allowances shall not be provided as a condition of a renewal.

- 5) **Certification of Rent Credits and Paint and Carpet Allowances.** Plans and descriptions of work and materials that may be eligible for Rent Credits or Paint and Carpet Allowances and the maximum potential value of Rent Credits or Paint and Carpet Allowances must be agreed upon and made a part of the terms of the sublease. Rent Credits and Paint and Carpet Allowances will only become available after invoices for materials purchased and work performed have been certified by Project Staff as being a fair representation of work completed and work eligible for Rent Credits or Paint and Carpet Allowances. Neither Rent Credits nor Paint and Carpet Allowances will be available to the subtenant to reduce monthly base rent prior to certification of satisfactory completion of work.

#### **D. Subtenant Requirements.**

- 1) **Permits.** The subtenant will comply with all **permitting and regulatory** requirements of the Authority, the City and County of San Francisco, the US Navy and any other regulatory agency.
- 2) **Credit.** The subtenant must meet the same standards of **creditworthiness** and other financial conditions as required for subtenants receiving full Authority review.

### **III. DIRECTOR OF ISLAND OPERATIONS**

- A. Prior to execution by the Director of Island Operations, the terms and conditions of a sublease will be reviewed by the US Navy, the Treasure Island Homeless Development Initiative and the Mayor's Office of Base Reuse to assure that the proposed subtenant and the terms of the proposed tenancy are compatible with current activities and operations as well as the Development Program.
- B. The Director of Island Operations shall present a written description at each monthly meeting of the Authority describing all subleasing activity, including subleases and renewals signed by the Director and the terms of those subleases and renewals.





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*DRAFT DATED \_\_\_\_\_*  
*CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED*

*[MULTI-TENANT SUBLEASE FORM DOCUMENT – DUPLICATE BEFORE REVISING  
LAST REVISION JUNE 7, 2007]*

**SUBLEASE**

**between**

**TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

**and**

---

**as Subtenant**

**For the Sublease of**

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**Treasure Island Naval Station  
San Francisco, California**

**\_\_\_\_\_, 200\_**

# TREASURE ISLAND SUBLEASE

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ADDENDUM TO SUBLEASE

## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated for reference purposes only as of \_\_\_\_\_, 200\_, is by and between the TREASURE ISLAND DEVELOPMENT AUTHORITY, a California public benefit corporation ("Sublandlord"), and \_\_\_\_\_, a \_\_\_\_\_ ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated \_\_\_\_\_, as amended from time to time (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord certain real property located on Treasure Island Naval Station (the "Property"), as more particularly described in the Master Lease.

B. Subtenant desires to sublet from Sublandlord, and Sublandlord is willing to sublet to Subtenant, a portion of the Property on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### **1. BASIC SUBLEASE INFORMATION**

The following is a summary of basic sublease information (the "Basic Sublease Information"). Each item below shall be deemed to incorporate all of the terms of this Sublease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Sublease, the more specific provision shall control.

Sublease Reference Date: \_\_\_\_\_, 200\_

Sublandlord: TREASURE ISLAND DEVELOPMENT  
AUTHORITY, a California public benefit  
corporation

Subtenant: \_\_\_\_\_,  
a \_\_\_\_\_

Subleased Premises (Section 2.1):

Approximately \_\_\_\_\_ square feet  
located at \_\_\_\_\_ as more  
particularly shown on Exhibit B, attached  
hereto[, including the improvements thereon  
and the non-exclusive right to use the  
parking area shown on Exhibit B].

Facility (Section 5.3):

\_\_\_\_\_

Term: (Section 4.1):

Commencement date: \_\_\_\_\_, 200\_  
Expiration date \_\_\_\_\_, 200\_

**[Notwithstanding anything in this Sublease  
to the contrary, either Sublandlord or  
Subtenant, in its sole discretion, may  
terminate this Sublease for any reason upon  
delivery of not less than thirty (30) days'  
prior written notice to the other party.]**

Base Rent (Section 5.1):

Annual Base Rent: \$ \_\_\_\_\_  
(\$ \_\_\_\_\_ per square foot)

Monthly payments: \$ \_\_\_\_\_  
(\$ \_\_\_\_\_ per square foot)

Rent Adjustment Date(s) (Section 5.2):

\_\_\_\_\_

Rent Increase Percentage (Section 5.2):

\_\_\_\_\_ percent (\_\_\_%)

Subtenant's Proportionate Share (Section 5.3):

\_\_\_\_\_ percent (\_\_\_%)

Use (Section 7.1):

\_\_\_\_\_

Repair Amount (Section 13.1):

\$ \_\_\_\_\_

Amount of All Risk Property Insurance  
Coverage (Section 17.1(e)):

\$ \_\_\_\_\_

Security Deposit (Section 19.3):

\$ \_\_\_\_\_

Notice Address of Sublandlord (Section 21.1):   Treasure Island Development Authority  
Treasure Island Project Office  
410 Avenue of Palms  
Building 1, 2nd Floor  
Treasure Island  
San Francisco, CA 94130  
Attn: Mirian Saez  
Director of Island Operations  
Fax No.: 415-274-0299

with a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Eileen M. Malley  
Fax No.: (415) 554-4755

Notice Address of Subtenant (Section 21.1):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

Notice Address of Master Landlord (Section 21.1):

Department of The Navy  
Base Realignment and Closure  
Program Management Office West  
1455 Frazee Road, Suite 900  
San Diego, CA 92108-4310  
Fax #: (619) 532-9858

Other Noteworthy Provisions (Addendum  
Section \_\_\_\_)

## 2. PREMISES

**2.1. Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises. Subtenant shall have the non-exclusive right to use, together with other subtenants in the Facility, the lobbies, corridors, elevators, stairways and other public areas of the Facility and the Property (collectively, the "Common Areas"), and the non-exclusive right of access to and from the Premises by the main entrances to the Facility

and the Property.

In the event Subtenant uses or occupies space outside the Premises without the prior written consent of Sublandlord (the "Encroachment Area"), then upon written notice from Sublandlord ("Notice to Vacate"), Subtenant shall immediately vacate such Encroachment Area and pay as additional rent for each day Subtenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by Sublandlord's Board of Directors for the Premises or the Facility, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Sublandlord (the "Encroachment Area Charge"). If Subtenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Sublandlord of the Encroachment Area Charge be deemed a consent by Sublandlord to the use or occupancy of the Encroachment Area by Subtenant or a waiver (or be deemed as waiver) by Sublandlord of any and all other rights and remedies of Sublandlord under this Sublease (including Subtenant's obligation to indemnify, defend and hold Sublandlord harmless as set forth in the last paragraph of this Section 2.1), at law or in equity.

In addition to the foregoing amount, Subtenant shall pay to Sublandlord, as additional rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Sublandlord determines during subsequent inspection(s) that Subtenant has failed to vacate the Encroachment Area, then Subtenant shall pay to Sublandlord, as additional rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Sublandlord to Subtenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Sublandlord will incur by reason of Sublandlord's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Subtenant's failure to comply with the applicable Notice to Vacate and Sublandlord's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Sublandlord under this Sublease, at law or in equity. The amounts set forth in this Section 2.1 shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area.

In addition to the rights and remedies of Sublandlord as set forth in the immediately foregoing two paragraphs of this Section 2.1, the terms and conditions of the indemnity and exculpation provision set forth in Section 16 below shall also apply to Subtenant's use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Subtenant shall additionally indemnify, defend and hold Sublandlord harmless from and against any and all loss or liability resulting from delay by Subtenant in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any claims

against Sublandlord made by any tenant or prospective tenant founded on or resulting from such delay and losses to Sublandlord due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 2.1 and the reasonableness of the amount of the charges described in this Section 2.1.

Initials: \_\_\_\_\_ Sublandlord \_\_\_\_\_ Subtenant

## **2.2. As Is Condition of Premises.**

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them ("Subtenant's Agents"), of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 2.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises ("Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below), (iii) the quality, nature or adequacy of any utilities serving

the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use by Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 2.2(b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that any structures or improvements located on or about the Premises, may fail structurally and collapse.

### 3. COMPLIANCE WITH MASTER LEASE

3.1. **Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein.

3.2. **Performance of Master Landlord's Obligations.** Sublandlord does not assume the obligations of Master Landlord under the Master Lease. With respect to work, services, repairs, restoration, the provision of utilities or HVAC services, or the performance of any other obligations required of Master Landlord under the Master Lease, Sublandlord's sole obligation with respect thereto shall be to request the same, on request in writing by Subtenant, and to use reasonable efforts to obtain the same from Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any such work, services, repairs, repainting, restoration, the provision of utilities or HVAC services, or the performance of any of Master Landlord's obligations under the Master Lease.

3.3. **Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

3.4. **Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of

any rights of termination reserved by or vested in the Master Landlord.

#### **4. TERM**

**4.1. Term of Sublease.** The term of this Sublease (the "Term") shall commence on the Commencement Date set forth in the Basic Sublease Information, and expire on the Expiration Date set forth in the Basic Sublease Information, unless sooner terminated pursuant to the terms of this Sublease.

**4.2. Effective Date.** This Sublease shall become effective on the date (the "Effective Date") upon the later of (i) the Parties' execution and delivery of this Sublease, (ii) Sublandlord's Board of Director's approval of this Sublease at a duly noticed meeting, if such approval is required, or (iii) the Commencement Date.

**4.3. Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

**4.4. Termination by Sublandlord.** Subtenant's period of occupancy of the Premises is subject to Sublandlord's right to terminate this Sublease as provided herein at such time as Sublandlord determines, in its sole discretion, that the Premises are needed in connection with a Sublandlord program or project. As used herein, "Sublandlord program or project" shall mean any development or renovation, by public and/or private parties, of the building or land in or on which the Premises are located. In the event of any such development or renovation, Sublandlord shall have the right to terminate this Sublease without liability or expense upon delivery to Subtenant of thirty (30) days prior written notice of such termination. Subtenant agrees and shall be required to surrender possession of the Premises by the end of such thirty (30) day period.

**4.5. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person as that term is defined under the California Government Code Section 7260 et seq. ("California Relocation Act") and the Uniform Relocation Assistance and Real Property Policies Act, 42 U.S.C. 4601 et seq. ("URA"), and that Subtenant will not be entitled to any relocation benefits provided under the California Relocation Act and the URA, including any moving expenses, reimbursement for costs associated with increased rent, loss of goodwill or other costs related to the termination of Subtenant's Lease and Subtenant's relocation from the Premises. Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers,

directors and employees, agents, contractors and successors and assigns and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260, et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4601, et seq.).

Initials: \_\_\_\_\_ Subtenant

## 5. RENT

**5.1. Base Rent.** Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Base Rent in the amount set forth in the Basic Sublease Information. Base Rent shall be paid to Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 21.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

**5.2. Adjustments in Base Rent.** If this Sublease has not been terminated, then on each Rent Adjustment Date set forth in the Basic Sublease Information, the Base Rent shall be increased by the Rent Increase Percentage set forth in the Basic Lease Information.

**5.3. Subtenant's Proportionate Share of Expenses.** As used in this Sublease, "Expenses" shall mean the total costs and expenses paid or incurred by Sublandlord in connection with the ownership, operation, maintenance, management and repair of the Premises and/or the Facility or any part thereof, including, without limitation, all the following items: Common Area Expenses, Maintenance and Repair Expenses, Life Safety Costs, Management and Administration Expenses, Insurance Expenses and Utility Expenses. "Expenses" shall specifically exclude the following items: (a) depreciation and other "non-cash" items; (b) capital expenditures that (i) are not required by any Laws, (ii) do not significantly improve the operating efficiency of the Premises or the Facility, (iii) are not necessary to achieve cost savings, avoidance of cost increases, or both with respect to the Premises or the Facility, or (iv) are not necessary for the health, welfare and safety of the tenants of the Premises or the Facility; (c) costs for which Sublandlord is actually reimbursed (i) by any subtenant or occupant of the Facility, or (ii) by insurance by its carrier or any tenant's carrier or by anyone else; (d) any bad debt loss, rent loss, or other reserves of any kind or nature; (e) costs incurred by Sublandlord for the repair of damage to the Premises or the Facility, to the extent that Sublandlord is reimbursed in insurance proceeds; (f) cost of all damage to the Premises or the Facility due to casualty governed by Section 13 below, if covered by insurance; and (g) the wages, salaries and other compensation and benefits, including taxes levied thereon, of employees above the level of

\_\_\_\_\_, and the same of employees who do not devote substantially all of their employed time to the Facility unless such wages and benefits are prorated to reflect time spent on operating and managing the Facility vis-à-vis time spent on matters unrelated to operating and managing the Facility.

As used in this Sublease, "Common Area Expenses" shall mean all costs to operate, maintain, repair, replace, supervise, insure and administer the Common Areas including, without limitation, supplies, materials, labor and equipment used in or related to the operation and maintenance of the common areas, sprinkler systems, sidewalks, walkways, driveways, curbs, lighting systems and security services, if any, provided by Sublandlord for the Common Areas. As used in this Sublease, "Insurance Expenses" means the cost of all insurance carried by Sublandlord on the Premises and/or the Facility or any part thereof or interest therein, including, without limitation, premiums for "all risk" fire and extended coverage insurance, commercial general liability insurance, rent loss or abatement insurance, earthquake insurance, flood or surface water coverage, and other insurance as Sublandlord deems necessary in its sole discretion, and any deductibles paid under policies of any such insurance. The foregoing shall not be deemed an agreement by Sublandlord to carry any particular insurance relating to the Premises or the Facility. As used in this Sublease, "Life Safety Expenses" shall mean all costs to install, maintain, repair and replace all life safety systems, including, without limitation, all fire alarm systems, serving the Premises and/or the Facility or any part thereof (including all maintenance contracts and fees payable to life safety consultants) whether such systems are or shall be required by Sublandlord's insurance carriers, Laws or otherwise. As used in this Sublease, "Maintenance and Repair Expenses" shall mean all costs to maintain, repair, and replace the Premises and/or the Facility or any part thereof and the personal property used in conjunction therewith, including, without limitation, (i) all costs paid under maintenance, management and service agreements such as contracts for janitorial, security and refuse removal, (ii) all costs to maintain, repair and replace the roof coverings of the Premises or the Facility or any part thereof, (iii) all costs to maintain, repair and replace the plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Facility, (iv) the cost of all cleaning and janitorial services and supplies, if any, and (v) the cost of maintenance, depreciation and replacement of machinery, tools and equipment (if owned by Sublandlord) and for rental paid for such machinery, tools and equipment (if rented) used in connection with the operation or maintenance of the Facility. As used in this Sublease, "Management and Administration Expenses" shall mean all costs for management and administration of the Premises and/or the Facility or any part thereof, including, without limitation, a property management fee, accounting, auditing, billing, postage, salaries and benefits for all employees and contractors below the level of senior project manager engaged in the management, operation, maintenance, repair and protection of the Facility, whether located in the Facility or off-site, payroll taxes and legal and accounting costs, fees for licenses and permits related to the ownership and operation of the Facility, and office rent for the Facility management office or the rental value of such office if it is located within the Facility. As used in this Sublease, "Utility Expenses" shall mean the cost of all electricity, water, gas, heat, sewers, oil and other utilities, including any surcharges imposed, serving the Premises, the Facility or any

part thereof that are not separately metered to Subtenant or any other subtenant.

5.4. **Additional Charges.** In addition to Base Rent, Subtenant shall pay Subtenant's Proportionate Share of any and all Expenses, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder, all utility charges, and any amounts other than Base Rent that shall become due and payable by Subtenant under this Sublease (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

5.5. **Late Charge.** If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

5.6. **Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

## 6. TAXES, ASSESSMENTS AND OTHER EXPENSES

### 6.1. **Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant

recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

6.2. **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

## **7. USE; COVENANTS TO PROTECT PREMISES**

7.1. **Subtenant's Permitted Use.** Subtenant may use the Premises for the Permitted Use set forth in the Basic Sublease Information, but for no other purpose without the prior written consent of Sublandlord, which consent may be given or withheld in Sublandlord's sole and absolute discretion.

7.2. **Subtenant's Access to the Premises.** As provided in Section 30 of the Master Lease, Subtenant shall have access to the Premises on a 24-hours per day, seven days a week basis; provided, however, Subtenant shall coordinate such access with the local representative of Master Landlord.

7.3. **Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time.

7.4. **Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"); provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of

liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

**7.5. No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over Subtenant's use of the Premises in the event of any conflict; provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

**7.6. No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas on or about the Property outside of the Premises.

## **8. ALTERATIONS**

**8.1. Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications for any Alterations approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of construction on the Premises at all times.

**8.2. Historic Properties.** Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to any improvements on the Premises (i) which will affect the historic characteristics of the improvements or modify the appearance of the exterior of the improvements without Master Landlord's and Sublandlord's prior written consent, or (ii) if such Alterations would preclude qualifying the improvements for inclusion on the National Register for Historic Places.

**8.3. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of this Section 8 shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 19 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 8.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.

**8.4. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment used upon or installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and shall be removed by Subtenant, subject to the provisions of Section 19 hereof. Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

**8.5. Sublandlord's Alterations.** Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the improvements on the Premises; provided, that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the purposes stated herein.

## 9. REPAIRS AND MAINTENANCE

9.1. **Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

9.2. **Utilities.** Sublandlord shall provide the basic utilities and services described in the attached Exhibit E (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole cost, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay, without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit E.

9.3. **Landscaping.** Subtenant shall maintain the exterior landscaping of the Premises in good condition and repair.

9.4. **Janitorial Services.** Subtenant shall provide all janitorial services for the Premises.

9.5. **Pest Control.** Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

9.6. **Trash.** Subtenant shall deposit all trash into designated containers in the Premises in compliance with the Rules and Regulations attached hereto as Exhibit F. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

9.7. **No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any

part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

## **10. LIENS**

**9.1. Liens.** Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

## **11. COMPLIANCE WITH LAWS**

**11.1. Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary; provided, however Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* and Title 24 of the California Code of Regulations, and all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

## **11.2. Regulatory Approvals.**

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation, any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") Sublandlord, City and Master Landlord, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties"), against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

**11.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or to any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general liability, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

## **12. ENCUMBRANCES**

**12.1. Encumbrance By Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

### 13. DAMAGE OR DESTRUCTION

**13.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, fire, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in Section 17 below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more to repair than the Repair amount set forth in the Basic Lease Information, either party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 19 (except for damage caused by a casualty pursuant to which this Sublease may be terminated under this Section 13.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 13.1, then Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 8.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.

**13.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 13.1 above, there shall be no abatement in the Rent payable hereunder.

**13.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### 14. ASSIGNMENT AND SUBLETTING

**14.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, sublease or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises (a "Transfer"), without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion. Subtenant shall provide Sublandlord with a written notice of its intention to Transfer this Sublease or the Premises, together with a copy of the proposed Transfer agreement at least thirty (30) days prior to the commencement date of the proposed Transfer. Subtenant shall provide Sublandlord with such information regarding the proposed Transfer as Sublandlord may reasonably request.

14.2. **Bonus Rental.** If Sublandlord consents to a Transfer of any of Subtenant's interest in or rights with respect to the Premises pursuant to Section 14.1 above, then one hundred percent (100%) of any rent or other consideration payable to Subtenant in excess of the Base Rent payable hereunder (or the proportionate share thereof applicable to the portion of the Premises that is subject to the Transfer) shall be paid to Sublandlord immediately upon receipt by Subtenant.

## 15. **DEFAULT; REMEDIES**

15.1. **Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

- (a) **Failure to Pay Rent.** Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within five (5) days after such sums are due;
- (b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease; provided, Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.
- (c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and
- (d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

15.2. **Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

- (a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that

Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

**15.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## **16. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION**

**16.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused solely by the gross negligence or willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other

waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant, on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the Indemnified Parties' decision to Sublease the Premises to Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or

liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 16.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Subtenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

**16.2. Subtenant's Indemnity.** Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses arising out of Subtenant's use of the Premises, including but not limited to, any Losses arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises; (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises; and (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, in, on, or about the Premises or any Alterations, except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused solely by the gross negligence or intentional wrongful acts and omissions of the

Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

## 17. INSURANCE

**17.1. Required Insurance Coverage.** Without in any way limiting Subtenant's liability under Section 16 above, Subtenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term of this Sublease, the following insurance:

(a) **General Liability Insurance.** Comprehensive or commercial general liability insurance, with limits not less than Three Million Dollars (\$3,000,000) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than One Million Dollars (\$1,000,000), explosion, collapse and underground (XCU).

(b) **Automobile Liability Insurance.** If any automobiles or any other motor vehicles are operated in connection with Subtenant's activity on the Premises or the permitted use under Section 17.1 above Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability.

(c) **Worker's Compensation and Employer's Liability Insurance.** If Subtenant has employees, Worker's Compensation Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) **Personal Property Insurance.** Subtenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Subtenant for the replacement of Subtenant's personal property.

(e) **All Risk Property Insurance.** All risk property insurance insuring the Premises including, without limitation, any improvements, Alterations, furniture, fixtures and equipment located thereon, in an amount not less than the Amount of All Risk Property Insurance Coverage

set forth in the Basic Sublease Information.

(f) **Other Coverage.** Such other insurance as is required by law or as is generally required by commercial owners of property similar in size, character, age and location as the Premises, as may change from time to time, or as may be required by the City's Risk Manager.

**17.2. Claims-Made Policies.** If any of the insurance required in Section 17.1 above is provided under a claims-made form of policy, Subtenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Sublease, to the effect that should occurrences during the Term give rise to claims made after termination of this Sublease, such claims shall be covered by such claims-made policies.

**17.3. Annual Aggregate Limits.** If any of the insurance required in Section 17.1 above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

**17.4. Payment of Premiums.** Subtenant shall pay the premiums for maintaining all required insurance.

**17.5. Waiver of Subrogation Rights.** The parties release each other, and their respective authorized representatives, from any claims for damage to the Premises or to the fixtures, personal property, improvements or Alterations of either Sublandlord or Subtenant in or on the Premises which are caused by or result from risks insured against under any property insurance policies carried by the parties and in force at the time of any such damage, to the extent such claims for damage are paid by such policies. Each party shall cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any damage covered by any policy.

**17.6. General Insurance Matters.**

(a) All liability insurance policies required to be maintained by Subtenant hereunder shall contain a cross-liability clause, shall name as additional insureds the "THE TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary to any other insurance available to the additional insureds with respect to claims arising under this Sublease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Subtenant hereunder shall be issued

by an insurance company or companies reasonably acceptable to Sublandlord with an AM Best rating of not less than A-VIII and authorized to do business in the State of California.

(c) All insurance policies required to be maintained by Subtenant hereunder shall provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Subtenant and Sublandlord. Such notice shall be given in accordance with the notice provisions of Section 21.1 below.

(d) Subtenant shall deliver to Sublandlord certificates of insurance and additional insured policy endorsements in a form satisfactory to Sublandlord evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. Subtenant shall, upon Sublandlord's request, promptly furnish Sublandlord with a complete copy of any insurance policy required hereunder.

(e) Not more often than every year and upon not less than sixty (60) days' prior written notice, Sublandlord may require Subtenant to increase the insurance limits set forth in Section 17.1 above if Sublandlord finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Subtenant with respect to risks comparable to those associated with the use of the Premises.

(f) Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

(g) Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

## **18. ACCESS BY SUBLANDLORD**

### **18.1. Access to Premises by Sublandlord.**

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any

portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

**18.2. Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## **19. SURRENDER**

**19.1. Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 8.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

**19.2. No Holding Over.** If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises. Subtenant shall have no right to hold over without the prior written consent of Sublandlord, which consent

may be withheld in Sublandlord's sole and absolute discretion. If Sublandlord holds over the Premises or any part thereof after expiration or earlier termination of this Sublease, such holding over shall be terminable upon written notice by Sublandlord, and the Base Rent shall be increased to two hundred percent (200%) of the Base Rent in effect immediately prior to such holding over, and such holdover shall otherwise be on all the other terms and conditions of this Sublease. This Section shall not be construed as Sublandlord's permission for Subtenant to hold over. Acceptance of any holdover Base Rent by Sublandlord following expiration or termination of this Sublease shall not constitute an extension or renewal of this Sublease.

**19.3. Security Deposit.** Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount set forth in the Basic Sublease Information as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.3, Sublandlord shall return such security deposit to Subtenant within forty-five (45) days of the termination of this Sublease.

## **20. HAZARDOUS MATERIALS**

**20.1. No Hazardous Materials.** Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Sections 9601 et seq.), or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural

gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Subtenant agrees that it shall comply, without limiting the foregoing, with the provisions of Article 21 of the San Francisco Health Code including, without limitation, regarding obtaining and complying with the requirements of an approved hazardous materials management plan, and with the requirements of the environmental protection provisions provided for in Section 13 of the Master Lease.

**20.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 20.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 16.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any

Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**20.3. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Subtenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises as described in the EBS and the FOSL. In addition, California's Proposition 65, Health and Safety Code Section 25249.6 et seq., requires notice that some of these Hazardous Materials are known by the State of California to cause cancer or reproductive harm. By execution of this Sublease, Subtenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Sections 25249.6 et seq., 25359.7 and related statutes.

## **21. GENERAL PROVISIONS**

**21.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to the appropriate addresses set forth in the Basic Sublease Information. Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 21.1 and applicable Laws, shall be deemed receipt of such notice.

**21.2. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment of Rent due hereunder during the continuance of any such

breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

**21.3. Amendments.** Neither this Sublease nor any term or provision hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**21.4. Authority.** If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosures set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**21.5. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**21.6. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not

language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**21.7. Successors and Assigns.** Subject to the provisions of Section 14, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**21.8. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**21.9. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**21.10. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

**21.11. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

**21.12. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Sublease, reasonable fees of attorneys in the Office of the San Francisco City Attorney (Sublandlord's General Counsel) shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Further, for purposes of this Sublease, the term "attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. The term "attorney" shall have the same meaning as the term "counsel".

**21.13. Time of Essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**21.14. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**21.15. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

**21.16. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or

relating to the Premises.

21.17. **Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

21.18. **Non-Liability of Indemnified Parties' Officials, Employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Sublease.

21.19. **No Discrimination.** Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

21.20. **Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21.21. **Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord.

## 22. SPECIAL PROVISIONS

22.1. **Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

22.2. **Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

22.3. **TIHDI Job Broker.** Subtenant shall comply with the requirements of the TIHDI Work Force Hiring Plan attached hereto as Exhibit F.

22.4. **Local Hiring.** Subtenant further agrees to use good faith efforts to hire residents of the City and County of San Francisco at all levels of Subtenant's personnel needs and to contract

with local businesses for Subtenant's purchase of supplies, materials, equipment or services.

## **22.5. Non-Discrimination in City Contracts and Benefits Ordinance.**

(a) **Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) **Sub-Subleases and Other Subcontracts.** Subtenant shall include in all sub-subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) **Non-Discrimination in Benefits.** Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Sublease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **HRC Form.** As a condition to this Sublease, Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Subtenant hereby represents that prior to execution of this Sublease, (i) Subtenant executed and submitted to the HRC Form HRC-128-101 with supporting documentation; and (ii) the HRC approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination

by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**22.6. MacBride Principles - Northern Ireland.** The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**22.7. Tropical Hardwood and Virgin Redwood Ban.** The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Section 802(b) and 803(b) of the San Francisco Environment Code, Subtenant shall not provide any items to the construction of tenant improvements or Alterations in the Premises, or otherwise in the performance of this Sublease, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**22.8. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**22.9. Wages and Working Conditions.** Subtenant agrees that any person performing labor in the construction of any tenant improvements and any Alterations to the Premises, which Subtenant provides under this Sublease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject

to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Subtenant shall include, in any contract for construction of such tenant improvements and Alterations, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord upon request, certified payroll reports with respect to all persons performing labor in the construction of such tenant improvement work or any Alterations to the Premises.

**22.10. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Sublandlord or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

**22.11. Pesticide Prohibition.** Subtenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Subtenant to submit to Sublandlord an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Subtenant may need to apply to the Premises during the terms of this Sublease, (b) describes the steps Subtenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as Subtenant's primary IPM contact person with the City. In addition, Subtenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

**22.12. First Source Hiring Ordinance.** The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after Sublandlord adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Subtenant shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

**22.13. Sunshine Ordinance.** In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City departments and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth

or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

**22.14. Conflicts of Interest.** Through its execution of this Sublease, Subtenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Subtenant becomes aware of any such fact during the Term of this Sublease, Subtenant shall immediately notify Sublandlord.

**22.15. Charter Provision.** This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

**22.16. Requiring Health Benefits for Covered Employees.** Unless exempt, Subtenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Sublease as though fully set forth. The text of the HCAO is available on the web at [www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml](http://www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml). Capitalized terms used in this Section and not defined in this Sublease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Subtenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Subtenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Subtenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (a) above.

(c) Subtenant's failure to comply with the HCAO shall constitute a material breach of this Sublease. Sublandlord shall notify Subtenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Sublease for violating the HCAO, Subtenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Subtenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Sublandlord shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Sublandlord.

(d) Any Subcontract entered into by Subtenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Subtenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Subtenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Sublandlord may pursue the remedies set forth in this Section against Subtenant based on the Subcontractor's failure to comply, provided that Sublandlord has first provided Subtenant with notice and an opportunity to obtain a cure of the violation.

(e) Subtenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Sublandlord with regard to Subtenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Subtenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Subtenant shall keep itself informed of the current requirements of the HCAO.

(h) Subtenant shall provide reports to Sublandlord in accordance with any reporting standards promulgated by Sublandlord under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Subtenant shall provide Sublandlord with access to records pertaining to compliance with the HCAO after receiving a written request from Sublandlord to do so and being provided at least five (5) business days to respond.

(j) Sublandlord may conduct random audits of Subtenant to ascertain its compliance with HCAO. Subtenant agrees to cooperate with Sublandlord when it conducts such audits.

(k) If Subtenant is exempt from the HCAO when this Sublease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) (or [Fifty Thousand Dollars (\$50,000) if Subtenant is a qualified nonprofit]), but Subtenant later enters into an agreement or agreements that cause Subtenant's aggregate amount of all agreements with Sublandlord to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Subtenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

**22.17. Notification of Limitations on Contributions.** Through its execution of this Sublease,

Subtenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

**22.18. Preservative-Treated Wood Containing Arsenic.** As of July 1, 2003, Subtenant may not purchase preservative-treated wood products containing arsenic in the performance of this Sublease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Subtenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Subtenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**22.19. Resource Efficient City Buildings and Pilot Projects.** Subtenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Subtenant hereby agrees that it shall comply with all applicable provisions of such code sections.

**22.20. Food Service Waste Reduction.** Subtenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Sublease as though fully set forth. This provision is a material term of this Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Sublandlord will suffer actual damages that will be impractical or extremely difficult to determine; further, Subtenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated

damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Sublandlord will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Sublandlord because of Subtenant's failure to comply with this provision.

**22.21. Estoppel Certificates.** At any time and from time to time, within ten (10) days after Sublandlord's request, Subtenant will execute, acknowledge and deliver to Sublandlord a statement certifying the following matters: (a) the Commencement Date and Expiration Date of this Sublease; (b) that this Sublease is unmodified and in full force and effect (or if there have been modifications, that this Sublease is in full force and effect as modified and the date and nature of such modifications); (c) the dates to which the Rent has been paid; (d) that there are no Events of Default under this Sublease (or if there are any Events of Default, the nature of such Event of Default); and (e) any other matters reasonably requested by Sublandlord. Sublandlord and Subtenant intend that any such statement delivered pursuant to this paragraph may be relied upon by any assignee of Sublandlord's interest in the Master Lease or this Sublease, any mortgagee or any purchaser or prospective purchaser of the building or land on which the Premises are located. Subtenant irrevocably appoints Sublandlord, as Subtenant's agent, to execute and deliver in the name of Sublandlord any such instrument if Subtenant fails to do so, which failure shall also be an Event of Default under this Sublease.

**22.22. Addendum.** The terms of the Addendum attached to this Sublease are incorporated into the Sublease by reference. In the event of any inconsistency between the Sublease and the Addendum, the terms of the Addendum shall control.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

**SUBTENANT:**

\_\_\_\_\_,  
a \_\_\_\_\_

**By:** \_\_\_\_\_  
**Its:** \_\_\_\_\_

**SUBLANDLORD:**

**Treasure Island Development Authority**

**By:** \_\_\_\_\_  
Mirian Saez  
Director of Island Operations

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA, City Attorney**

**By:** \_\_\_\_\_  
Deputy City Attorney

EXHIBIT A

MASTER LEASE

EXHIBIT B

DIAGRAM OF PREMISES

EXHIBIT C

COVER PAGE OF THE SEISMIC REPORT

EXHIBIT D

RULES AND REGULATIONS

EXHIBIT E

STANDARD UTILITIES AND SERVICES AND RATES

EXHIBIT F

TIHDI WORKFORCE HIRING AGREEMENT

ADDENDUM TO SUBLEASE





855-622-6789 | [www.avery.com](http://www.avery.com) | 1-800-451-5353

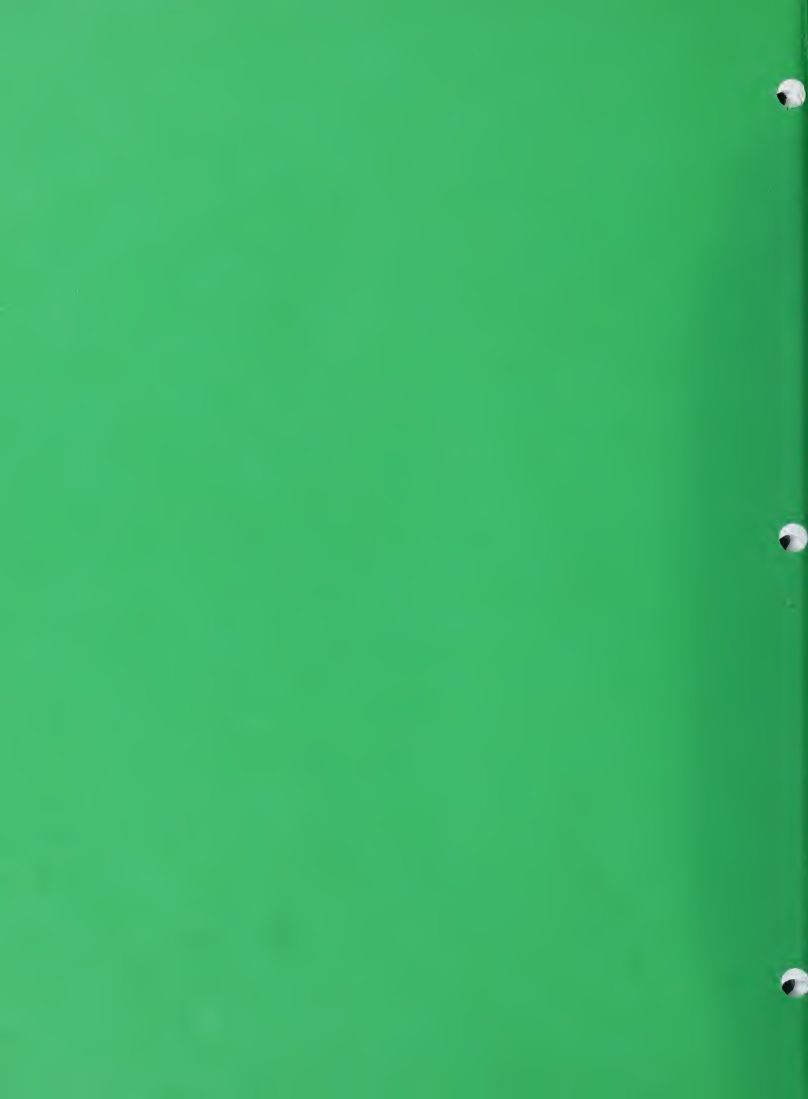


Exhibit C  
Minimum Rental Rate Schedule

Building No.	Name	Highest and Best Use	Minimum Rental Rate psf
402	Gymnasium	Athletic	\$0.00
502	Kidango	Childcare	\$0.65
Field F		Filed	\$0.15
Field I		Field	\$0.05
Great Lawn		Field	\$0.05
Field H		Field	\$0.05
Field E		Field	\$0.05
Rugby		Field	\$0.05
California		Field	\$0.05
180	Building 180	Industrial	\$0.65
62	Building 62	Industrial - Occupied Portion	\$0.41
671	Carpentry Shop	Industrial	\$0.35
180	Building 180	Industrial	\$0.25
670	Brig	Industrial	\$0.25
216	RV Storage	Industrial	\$0.20
201	Navy Exchange	Industrial	\$0.20
69	Shed	Industrial	\$0.20
2	Hangar 2	Industrial	\$0.15
3	Hangar 3	Industrial	\$0.10
34	Commissary	Industrial	\$0.10
292	Warehouse	Industrial	\$0.10
62	Building 62	Industrial - Unoccupied Portion	\$0.10
330	Gas Station	Industrial	\$0.05
258	Post Office	Industrial	\$0.05
1	Administrative Building	Office	\$0.75
298	Yacht Club	Office - Commercial Assembly	\$0.50
265	Library	Office - Commercial Assembly	\$0.50
497	Ship Shape	Office - Commercial Assembly	\$0.50
229	Club House (Life Learning)	Office - Commercial Assembly	\$0.50
140	Nimitz Conference Center	Office - Commercial Assembly	\$0.25
227	Fog Watch	Office - Commercial Assembly	\$0.25
146	Gatehouse	Retail	\$1.25
Causeway	Photo Shack	Retail	\$1.25+
183	Café	Retail	\$1.25
34	Commissary	Rugby Club	\$0.25







**AGENDA ITEM 8(f)**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of June 13, 2007**

**Subject:** Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with Rubicon Enterprises, Inc. to Provide Landscape Services Commencing July 1, 2007, and Expiring on June 30, 2008. (Consent Item)

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

**BACKGROUND**

Rubicon Enterprises, Inc. ("Rubicon"), a California nonprofit public benefit corporation and a member organization of the Treasure Island Homeless Development Initiative ("TIHDI"), provides services that increase economic opportunities for economically-disadvantaged people. The Treasure Island Development Authority Purchasing Policy and Procedures authorize non-competitive negotiations for contracts that are in furtherance of the Homeless Assistance Agreement between the Authority and TIHDI. Therefore, the landscape services contract with Rubicon has been awarded on a non-competitive negotiated basis.

Rubicon Landscape Services provides stable employment and livable wages to disabled and economically disadvantaged individuals from the San Francisco Bay Area. The Treasure Island operation hires strictly from the City of San Francisco. Since 1998, sixty-four (64) Rubicon Landscape employees have been hired through the TIHDI referral programs. Three TIHDI referrals have been promoted to the position of Lead Worker and two to the position of Supervisor. Other former employees have moved on to opportunities including working for SF Recreation and Parks Department, SF Conservation Corps and one has returned to school on a full-time basis.

Routine and adjunct services are for five days a week for an amount not to exceed Sixty Four Thousand One Hundred and Eighteen Dollars (\$64,118) per month or Seven Hundred Sixty Nine Thousand Four Hundred Twenty One Dollars (\$769,421) for the period from July 1, 2007 through June 30, 2008. The contract also provides for \$30,579 for as-needed landscape services.

**RECOMMENDATION**

Project Staff recommends approval of the contract for landscape services with Rubicon from July 1, 2007 through June 30, 2008 for an amount not to exceed \$800,000.

## **EXHIBITS**

A Professional Services Agreement between the Treasure Island Development Authority and Rubicon, Inc.

Prepared by Marc McDonald, Facilities Manager

For Mirian Saez, Director of Island Operations

1 [Rubicon Contract]

2 **RESOLUTION AUTHORIZING THE DIRECTOR OF ISLAND OPERATIONS TO EXECUTE**  
3 **A PROFESSIONAL SERVICES AGREEMENT WITH RUBICON ENTERPRISES, INC. TO**  
4 **PROVIDE LANDSCAPE SERVICES COMMENCING JULY 1, 2007 AND EXPIRING JUNE**  
5 **30, 2008.**

6 WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island  
7 and Yerba Buena Island (together, the "Base"), which is currently owned by the United States  
8 of America ("the Federal Government"); and,

9 WHEREAS, The Base was selected for closure and disposition by the Base  
10 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
11 subsequent amendments; and,

12 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
13 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
14 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
15 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
16 conversion of the Base for the public interest, convenience, welfare and common benefit of  
17 the inhabitants of the City and County of San Francisco; and,

18 WHEREAS, Under the Treasure Island Conversion Act of 1997 (the "Act"), which  
19 amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to  
20 Chapter 1333 of the Statutes of 1968, the California Legislature (i) designated the Authority as  
21 a redevelopment agency under California redevelopment law with authority over the Base  
22 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the  
23 Base which are subject to the Tidelands Trust, vested in the Authority the authority to  
24 administer the public trust for commerce, navigation and fisheries as to such property; and,

1 WHEREAS, On February 6, 1998, the Board of Supervisors adopted Resolution No.  
2 43-98 approving the designation of the Authority as a redevelopment agency for Treasure  
3 Island and Yerba Buena Island; and,

4 WHEREAS, The Authority has negotiated and endorsed a proposed Base Closure  
5 Homeless Assistance Agreement and Option to Lease Real Property (the "Homeless  
6 Assistance Agreement") with the Treasure Island Homeless Development Initiative ("TIHDI"),  
7 a consortium of nonprofit corporations organized to utilize the resources the Base to help fill  
8 gaps in the continuum of care for homeless persons and families, pursuant to the Base  
9 Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

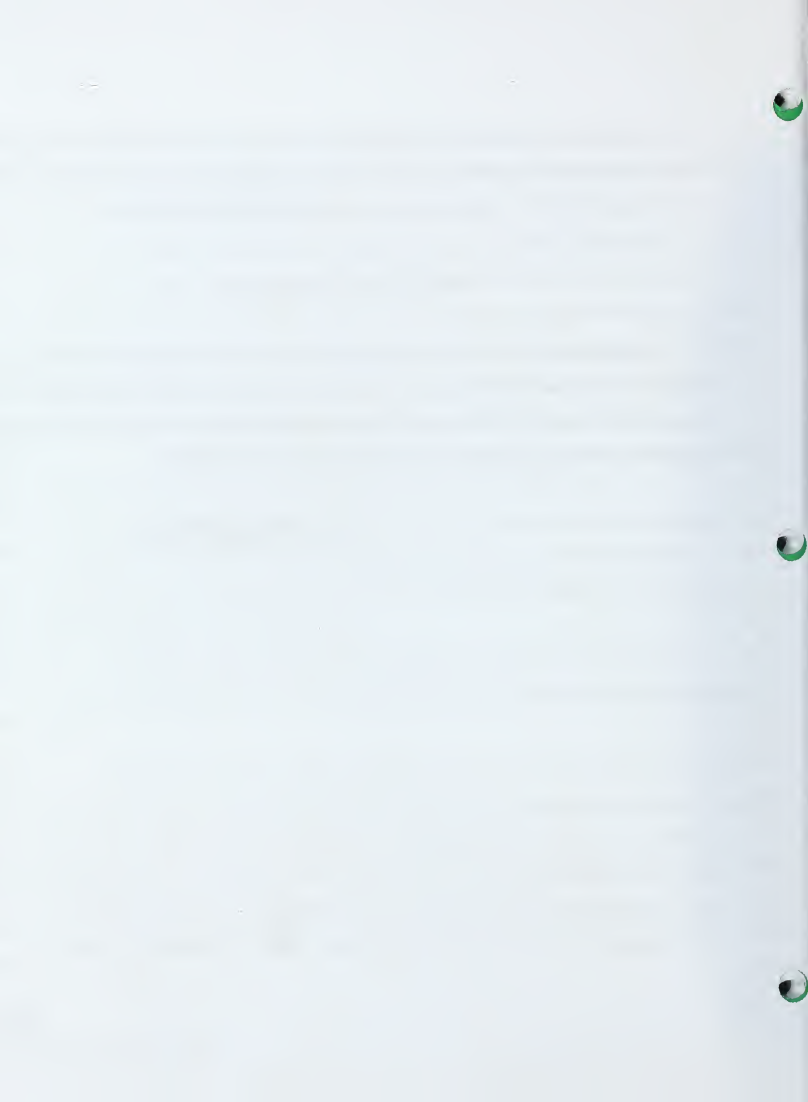
10 WHEREAS, the Authority wishes to support TIHDI pursuant to the Base Closure  
11 Community Redevelopment and Homeless Assistance Act of 1994; and

12 WHEREAS, Rubicon Enterprises, Inc., is a California nonprofit corporation and  
13 a member organization of TIHDI, and Rubicon Enterprises, Inc. has represented and  
14 warranted that it is qualified to perform the landscape services required by the Authority as  
15 set forth under the proposed contract; and

16 WHEREAS, The Authority's purchasing policy and procedures authorize non-  
17 competitive negotiations for contracts in furtherance of the Homeless Assistance Agreement;  
18 and,

19 WHEREAS, The Authority has negotiated with the Rubicon Enterprises, Inc. to reach  
20 agreement on the terms of a new Professional Services Agreement (the "Agreement") in an  
21 amount not to exceed Eight Hundred Thousand Dollars (\$800,000) which (i) describes the  
22 scope of work for the services shown in Appendix B-1 of the Agreement attached to this  
23 resolution as Exhibit A, and (ii) establishes the term of the Agreement for a period of 12  
24 months commencing July 1, 2007 and expiring on June 30, 2008; now, therefore be it  
25







RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT



Treasure Island Development Authority  
410 Avenue of the Palms  
Treasure Island  
San Francisco, California 94130

**Agreement between the Treasure Island Development Authority and  
RUBICON ENTERPRISES, INC.**

This Agreement is made this 1<sup>ST</sup> day of July, 2007, in the City and County of San Francisco, State of California, by and between: Rubicon Enterprises, Inc., a California nonprofit corporation, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a nonprofit public benefit corporation hereinafter referred to as the "Authority," acting by and through its Director of Island Operations, hereinafter referred to as the "Director."

**Recitals**

WHEREAS, the Treasure Island Development Authority ("Authority") wishes to utilize the resources of the former Naval Station Treasure Island to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, the Authority wishes to procure landscape services at Naval Station Treasure Island; and,

WHEREAS, The Authority's Purchasing Policy and Procedures authorize non-competitive negotiations for contracts that are in furtherance of the Homeless Assistance Agreement between the Authority and the Treasure Island Homeless Development Initiative ("TIHDI") including any TIHDI member organizations for contracts for economic development opportunities.

WHEREAS, Contractor, a member organization of TIHDI, provides landscape services that increase economic opportunities for economically-disadvantaged people and people with disabilities; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by Authority as set forth under this Contract; Now, THEREFORE, the parties agree as follows:

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco (the "City"). Charges will accrue only after prior written authorization certified by the Controller, and the amount of Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority budget decisions are subject to the discretion of the Mayor and the Authority's Board of Directors and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**2. Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from July 1, 2007 to June 30, 2008.

**3. Effective Date of Agreement**

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

**4. Services Contractor Agrees to Perform**

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

**5. Compensation**

Compensation shall be made in monthly payments on or before the Tenth day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Island Operations, in his or her sole discretion, concludes has been performed as of the Final day of the immediately preceding month. In no event shall the amount of this Agreement exceed Eight Hundred Thousand Dollars and no cents (\$800,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Price Sheet," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Authority as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

**6. Guaranteed Maximum Costs**

a. The Authority's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the Authority are not authorized to request, and the Authority is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the Authority are not authorized to offer or promise, nor is the Authority required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

#### **7. Payment; Invoice Format**

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by Authority to Contractor shall be subject to audit by City.

Payment shall be made by Authority to Contractor at the address specified in the section entitled "Notices to the Parties."

#### **8. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Deleted by Agreement of Parties.

#### **10. Taxes**

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the Authority to enable the Authority to comply with any reporting requirements for possessory interests that are imposed by applicable law.

#### **11. Payment Does Not Imply Acceptance of Work**

The granting of any payment by Authority, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and in such case must be replaced by Contractor without delay.

#### **12. Qualified Personnel**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

#### **13. Responsibility for Equipment**

Authority shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority.

#### **14. Independent Contractor; Payment of Taxes and Other Expenses**

##### **a. Independent Contractor**

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with Authority, nor be entitled to participate in any plans, arrangements, or distributions by Authority pertaining to or in connection with any retirement, health or other benefits that Authority may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**b. Payment of Taxes and Other Expenses.**

Should Authority, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

**15. Insurance**

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the US Navy, the Treasure Island Development Authority, and the City and County of San Francisco, their Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to Authority of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

**Treasure Island Development Authority  
410 Avenue of the Palms  
Treasure Island  
San Francisco, CA. 94130  
Attn: Director of Island Operations**

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to Authority certificates of insurance and additional insured policy endorsements with insurers with ratings

comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to Authority, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor hereunder.

## **16. Indemnification**

Contractor shall indemnify and save harmless Authority and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by Authority or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any claims against the Authority.

In addition to Contractor's obligation to indemnify Authority, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

Contractor shall indemnify and hold Authority harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

### **a. General Indemnity**

To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the Authority, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

### **b. Limitations**

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

**c. Copyright Infringement**

Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the Authority, or any of its boards, commissions, officers, or employees of articles or services to be supplied in then performance of Contractor's services under this Agreement.

**17. Incidental and Consequential Damages**

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that Authority may have under applicable law.

**18. Liability of Authority**

AUTHORITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

**19. Liquidated Damages**

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, Authority will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of Three Thousand Dollars (\$3,000) per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that Authority will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. Authority may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Contractor's failure to deliver to Authority within the time fixed or such extensions of time permitted in writing by Purchasing.

## **20. Default; Remedies**

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **21. Termination for Convenience**

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date

specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work that Authority designates to be completed prior to the date of termination specified by Authority.
- (7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor, without profit, for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which services or work Authority has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.
- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to Authority against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

## **22. Rights and Duties upon Termination or Expiration**

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

## **23. Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

## **24. Proprietary or Confidential Information of Authority**

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority. Contractor agrees that all information disclosed by Authority to Contractor shall be held in confidence and used only

in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**25. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, or by fax, and shall be addressed as follows:

To Authority: **Treasure Island Development Authority**  
**410 Avenue of the Palms**  
**Treasure Island**  
**San Francisco, CA. 94130**  
**Attn: Mirian Saez, Director of Island Operations**  
**Fax: (415) 274-0299**

To Contractor: Rick Aubry, President  
Rubicon Enterprises, Inc.  
154 South 23<sup>rd</sup> Street  
Richmond, CA. 94804  
Fax: (510) 412-1771  
FEIN: 68-0353815  
Vendor No. 46249

Any notice of default must be sent by registered mail.

**26. Ownership of Results**

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**27. Works for Hire**

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**28. Audit and Inspection of Records**

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit

Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority by this Section.

## **29. Subcontracting**

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

## **30. Assignment**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement.

## **31. Non-Waiver of Rights**

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

## **32. Earned Income Credit (EIC) Forms**

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Authority may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

### **33. Local Business Enterprise Utilization; Liquidated Damages**

#### **a. The LBE Ordinance**

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle Authority, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

#### **b. Compliance and Enforcement**

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

### **34. Nondiscrimination; Penalties**

#### **a. Contractor Shall Not Discriminate**

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**b. Subcontracts**

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2 (a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits**

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract**

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**e. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**35. MacBride Principles—Northern Ireland**

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities,

and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**36. Tropical Hardwood and Virgin Redwood Ban**

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**37. Drug-Free Workplace Policy**

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

**38. Resource Conservation**

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**39. Compliance with Americans with Disabilities Act**

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**40. Sunshine Ordinance**

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**41. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the

public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority to terminate and/or not renew the Agreement, partially or in its entirety.

#### **42. Limitations on Contributions**

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **43. Requiring Minimum Compensation for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour for the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then that employee is covered by San Francisco's Minimum Wage Ordinance, which is Chapter 12R of the Administrative Code. As of January 1, 2007, Chapter 12R's minimum wage is \$9.14 per hour.

-b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Authority, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Authority, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this Authority for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this Authority to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### **44. Requiring Health Benefits for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q,

including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3 (e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Authority shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5 (f) (1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Authority.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### **45. First Source Hiring Program**

##### **a. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

##### **b. First Source Hiring Agreement**

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening

criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each Authority. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

### **c. Hiring Decisions**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**d. Exceptions**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**e. Liquidated Damages**

Contractor agrees:

- (1) To be liable to the Authority for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- (3) That the contractor's commitment to comply with this Chapter is a material element of the Authority's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the Authority and the public which is significant and substantial but extremely difficult to quantify; that the harm to the Authority includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the Authority suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the Authority and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the Authority suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- (5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm

caused to the Authority by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the Authority is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the Authority's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**f. Subcontracts**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**46. Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the Authority may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new Authority contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

**47. Preservative-treated Wood Containing Arsenic**

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **48. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Authority to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

#### **49. Administrative Remedy for Agreement Interpretation**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director who shall decide the true meaning and intent of the Agreement.

#### **50. Agreement Made in California; Venue**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

#### **51. Construction**

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

#### **52. Entire Agreement**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

#### **53. Compliance with Laws**

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

#### **54. Services Provided by Attorneys**

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

#### **55. Supervision of Minors**

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor.

Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

#### **56. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

#### **57. Protection of Private Information**

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the Authority may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

#### **58. Graffiti Removal**

— Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the Authority's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the Authority, the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

#### **59. Food Service Waste Reduction Requirements**

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, Authority will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that Authority will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Contractor's failure to comply with this provision.

#### **60. Slavery Era Disclosure**

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

61. Deleted by Agreement of Parties

62. **Pesticide Prohibition.** Contractor shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Contractor to submit to Authority an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Contractor may need to apply during the terms of this Agreement, (b) describes the steps Contractor will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as Contractor's primary IPM contact person with the Authority. In addition, Contractor shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**TREASURE ISLAND DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
**Mirian Saez, Director of Island Operations  
Treasure Island**

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**CONTRACTOR**

**Rubicon Enterprises, Inc.**

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

\_\_\_\_\_  
Rick Aubry, President  
Rubicon Enterprises, Inc.  
154 South 23<sup>rd</sup> Street  
Richmond, CA. 94804  
(510) 412-1771  
FEIN: 68-0353815

City vendor number: **46249**

**Appendices**

- A: Services to be Provided by Contractor  
B: Calculation of Charges

**Appendix A**  
**Services to be Provided by Contractor**

**Landscape Maintenance Specifications for  
Treasure Island and Yerba Buena Island  
Fiscal Year 2007**

**SERVICE LEVEL 1**

**Turf Grass Mowing and Associated Cleanup:** All turf areas shall be maintained in a manner that promotes proper turf health and a neat and attractive appearance. Turf grass areas shall be mowed once per week throughout the growing season, and then twice per month from November 15 through March 1st. Turf grass height shall be maintained between 2 inches and 3.5 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair and or replace all items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed once per week. Tree wells shall be maintained around all trees and large shrubs growing in turf areas. A weed control program shall be implemented to achieve turf areas relatively free of broadleaf weeds and other targeted weeds. Rubicon shall recycle and reuse waste plant material to the greatest extent possible.

**Turf Fertilization, Weed Control, Fungicide and Insecticides:** Fertilization shall be applied up to four times per year to promote the proper health and appearance of turf, trees, shrubs, groundcover and color areas. A complete fertilizer with an analysis of 16-6-8 shall be applied at a rate of 275 pounds per acre per application. Chem-Lawn or other commercial liquid fertilizer applications are not acceptable. Herbicides, fungicides, insecticides, and lime shall be applied as necessary to maintain superior plant health and appearance.

**Irrigation:** Irrigation shall be performed in a manner that promotes proper plant health and growth. Irrigation shall include watering of lawns, shrubs, trees, planting beds, ground cover, and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses used for watering, and on all connections made to fire hydrants.

At the Facilities Manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices. Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall provide water for irrigation and electricity for irrigation controllers, and shall be responsible for maintaining and repairing any underground piping located more than one foot from any sprinkler head.

**Annual & Perennial Color Plants:** Annual color shall be planted. Planting shall occur three times per year. Plant beds shall be maintained at all times to insure good plant health and appearance. Planting beds shall be dressed with fine, uniform organic

**Landscape Maintenance Specifications for  
Treasure Island and Yerba Buena Island  
Fiscal Year 2007**

compost. It is estimated that no more than 1,000 flats of annuals (333 flats per planting session) and some perennials will be required.

**Trees and Shrub Maintenance:** Trees and shrubs shall be pruned as required to encourage proper health, to maintain a pleasing appearance and to prevent interference with pedestrian and vehicular traffic. *Note: All tree pruning shall be limited to heights under 12 feet.* Pruning shall be performed to:

- Prevent growth in front of windows, over entranceways and walkways, and in locations where visibility at street intersections would be obstructed.
- Remove dead, diseased or damaged growth.
- Evenly form or balance trees and shrubs to maintain their established shape and appearance. Informal hedges or screen plantings shall not be converted to formal shapes
- Remove tree branches up to eight (8") inches in diameter and within ten (10') feet of the ground if such branches extend over pathways or roads, and within fourteen (14') feet if such branches extend over the bus route.
- Extensive pruning and "cut back" activities shall be accomplished in the winter to give trees and shrubs sufficient time to recover before the growing season.
- Ivy and ground cover shall be kept to a minimum of eight inches (8") from shrubs and trees.
- Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material
- A 3-inch layer of mulch will be installed over bare soil in shrub areas to discourage weeds and improve soil.

Any abnormal and large infestation of insects or disease organisms that cause extensive damage to mature trees, or to a great number of trees, shall be removed as directed at an additional cost

**Hard Surface Area Weed Control:** Weeds shall be removed from all asphalt and other hard surface areas. Herbicides shall be applied to prevent re-growth.

**Landscape Maintenance Specifications for  
Treasure Island and Yerba Buena Island  
Fiscal Year 2007**

**Policing:** All maintenance areas shall be policed at least once per week to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

**Debris Removal and Storm Damage Cleanup:** All maintenance areas shall be cleaned 2 times per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

**Playgrounds, Sandboxes, Ball Fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove foreign objects.

<b><u>Level 1 Task</u></b>	<b><u>Frequency / Year</u></b>
Policing	52
Mowing	43
Edging/Trimming	43
Fertilization	as needed
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	3 times plus spot spraying as needed
Storm Damage Cleanup	as needed
General Debris Pickup	as needed
Hand Irrigation	54

These frequencies are average projected amounts of service that Rubicon feels will be required to provide the standard of maintenance described above. Depending on overall weather patterns and associated plant responses Rubicon may perform some tasks more times than shown and others less times than shown.

**Landscape Maintenance Specifications for  
Treasure Island and Yerba Buena Island  
Fiscal Year 2007**

**SERVICE LEVEL 2**

**Turf Grass Mowing and Associated Cleanup:** All turf areas shall be maintained in a manner that promotes proper turf health and a neat and attractive appearance. Turf areas shall be mowed an average of two times per month. Turf grass height shall be maintained between 2 inches and 4 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers, and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair or replace any items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, and other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed once per month. Tree wells shall be maintained around all trees and large shrubs growing in lawn and turf areas. All clippings shall be cleared from walkways, roadways, and other paved areas. Rubicon shall recycle and reuse waste plant material to the greatest extent possible.

**Turf Fertilization, Weed Control, Fungicide and Insecticides:** None.

**Irrigation:** Minimum irrigation shall be performed in a manner that promotes good appearance of landscaped areas. Irrigation shall include the watering of lawns, shrubs, trees, ground cover and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses that are used for watering and all connections made to fire hydrants.

At the Facilities Manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices. Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall be responsible for maintaining and repairing irrigation controllers and any underground piping located more than one foot from any sprinkler head.

**Trees and Shrubs:** All trees and shrubs shall be pruned to provide safe passage, maintain a healthy and pleasing appearance, and prevent interference with pedestrian and vehicular traffic. Any extensive pruning or "cut back" shall be accomplished in the winter or during the dormant season. Any abnormal and large infestation of insects or disease organisms that cause extensive damage to mature trees, or to a great number of trees, shall be performed as directed at an additional cost. Ivy and ground cover shall be kept a minimum of eight inches (8") from shrubs and trees. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

**Landscape Maintenance Specifications for  
Treasure Island and Yerba Buena Island  
Fiscal Year 2007**

**Weed Control In Paved Areas:** Weeds shall be removed from all asphalt and other hard surface areas. Herbicides shall be applied to prevent re-growth.

**Policing, Debris Removal, and Storm Damage Cleanup:** All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

**Playgrounds, Sandboxes, Ball Fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove foreign objects.

<b><u>Level 2 Task</u></b>	<b><u>Frequency / Year</u></b>
Policing	24
Mowing	24
Edging/Trimming	24
Fertilization	0
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	0
Storm Damage Cleanup	as needed
General Debris Pickup	as needed
Hand Irrigation	36

These frequencies are average projected amounts of service that Rubicon feels will be required to provide the standard of maintenance described above. Depending on overall weather patterns and associated plant responses Rubicon may perform some tasks more times than shown and others less times than shown.

**Landscape Maintenance Specifications for  
Treasure Island and Yerba Buena Island  
Fiscal Year 2007**

**SERVICE LEVEL 3**

**Turf Grass Mowing and Associated Cleanup:** Grass and weeds shall be cut 16 times per year. Prior to mowing, all trash and debris, including leaves, paper and other objects within the maintenance area shall be removed. Grass/weeds shall be maintained at a uniform height of not less than 2" and not more than 5".

**Turf Fertilization, Weed Control, Fungicide and Insecticides:** None.

**Irrigation:** None.

**Trees and Shrubs:** All trees and shrubs shall be pruned as required to encourage proper health and to maintain a pleasing appearance. Any extensive pruning or "cut back" shall be accomplished in the winter or during the dormant season. Ivy and ground cover shall be kept a minimum of eight inches (8") from shrubs and trees. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

**Weed Control In Paved Areas:** Weeds shall be removed from all asphalt and other paved areas four times per year. Herbicides shall be applied to prevent re-growth.

**Policing, Debris Removal, and Storm Damage Cleanup:** All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

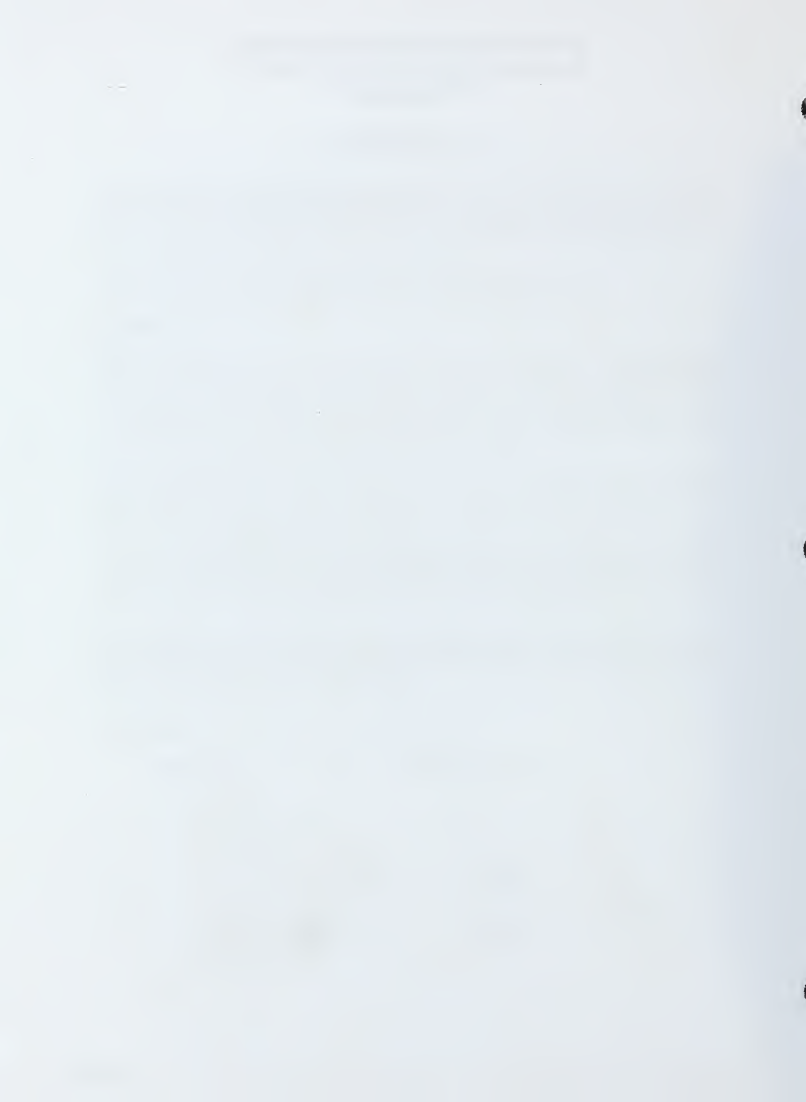
**Playgrounds, Sandboxes, Ball Fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a month to remove foreign objects.

**Irrigation:** Level 3 areas shall not include any irrigation

<b><u>Level 2 Task</u></b>	<b><u>Frequency / Year</u></b>
Policing	24
Mowing	16
Edging/Trimming	24
Fertilization	0
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	0
Storm Damage Cleanup	as needed
General Debris Pickup	as needed
Hand Irrigation	0

## Appendix B

### Price Sheet



# PRICE SHEET 5/25/07

## LEVEL 1

Parcel Number	
1	37,172
1A	9,065
2	23,019
3	9,481
13	58,762
15	140,598
24	9,851
Quarters 61	3,649
Cptns Park	9,005
<b>Total Level 1</b>	<b>\$ 300,601</b>

## LEVEL 2

Parcel Number	
Qtrs. 1	7,252
Qtrs. 2-7	18,665
Qtrs 62	8,236
Qtrs 240	8,838
5	5,212
10	22,430
14	33,134
16	21,818
<b>Total Level 2</b>	<b>\$ 125,584</b>

## LEVEL 3

Parcel Number	
Below 1-7	
4	1,562
6	9,401
6A	3,321
6B	4,400
7	21,605
8	15,981
12	6,158
17	
18	2,049
18B	5,563
19 and 19A	9,953
22	2,300
23	5,255
25	2,432
27	2,304
29	3,148
<b>Total Level 3</b>	<b>\$ 95,431</b>

## ADJUNCT WORK ITEMS

Item	Description	
1	Fire Breaks-YBI	48,471
2	Sea Wall (outer)	13,329
3	Sea Wall (inner)	8,049
4	Garbage & Tourist Stop	16,276
5	Garbage Cans on T.I.	13,545
6	Poison Oak	1,611
7	Annual Planting & Maint.	24,768
8	Disease & Insect	2,018
9	Storm Damage Clean Up	32,280
10	Inventory Housing (Parcel 28)	14,138
11	Navy housing - T.I. (One service.	7,651
	Excludes initial clean-up.)	
<b>Total</b>		<b>\$ 182,135</b>

## ADJUNCT WORK ITEMS (other City depts.)

12	Reservoir Maintenance	20,134
13	Pump Station Maintenance	5,286
14	Parcel 21	13,623
15	Parcel 21A	20,685
16	Parcel 27A	5,942
<b>Total</b>		<b>\$ 65,669</b>

**Total Adjunct Work Items \$ 247,804**

<b>TOTAL CONTRACT PRICE</b>	<b>\$ 769,421</b>
<b>TOTAL MONTHLY PRICE</b>	<b>\$ 64,118</b>

PRICE SHEET FOR  
LANDSCAPE MAINTENANCE SERVICES  
AT TREASURE ISLAND  
AND YERBA BUENA ISLAND

**RUBICON LANDSCAPE SERVICES**  
May 25, 2007





EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

**AGENDA ITEM 8(g)**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of June 13, 2007**

**Subject:** Resolution Authorizing the Director of Island Operations to Extend the Term of the Use Permit with Laura Bertone for Use of a Portion of Pier One on a Month-to-Month Basis Through November 30, 2007 and to Increase the Permit Fee Three Percent. (Consent Item)

**Contact** Mirian Saez, Director of Island Operations

**Phone** (415) 274-0660

**BACKGROUND**

Pax Fluid Systems is a private company in the business of researching and designing efficient methods of propulsion. The 150-foot research vessel, named Chaleur, has been renovated from an old minesweeper to a research lab. Laura Bertone is the caretaker and owner of the vessel and a managing partner of Pax Fluid Systems. On August 7, 2001, the Treasure Island Development Authority (the "Authority") issued a six-month Use Permit to Laura Bertone of Pax Fluid Systems for the use of 150 linear feet on the southern side of Pier One. Subsequently, the Authority has approved four extensions of the term of the Permit. The term of the current extension expired on May 31, 2007. Project Staff has negotiated an extension of the term of the Permit through November 30, 2007 and an increase in the Permit Fee of three percent (3%). The resulting Permit Fee is One Thousand Ninety Three Dollars (\$1,093) per month or \$7.28 per lineal foot.

**FAIR MARKET VALUE**

According to John Davey, Assistant Deputy Director of Maritime for the Port of San Francisco, long term berthing rates for 150 foot vessels is an unusual requirement. The vessels are too large to be considered pleasure craft and too small to be considered commercial vessels. The Treasure Island berthing rate for this established permittee is in the median range of fees in the Bay Area. Berthing rates for pleasure craft at local Marinas range from \$6.40 per lineal foot in San Leandro to \$8.25 per lineal foot at the Port of Oakland. Mr. Davey reports that the average rate for pleasure craft at the Port of San Francisco \$6.50 per lineal foot.

**STANDING AS TENANT**

Laura Bertone is current in all Permit Fee payments to the Authority. The Use is consistent with the terms of the Permit. Permittee is compliant with all insurance requirements of the Permit and the required Security Deposit has been deposited with the Authority.

**RECOMMENDATION**

Approve the Fifth Amendment to Use Permit between Laura Bertone and the Authority.

## EXHIBITS

Exhibit A - Fifth Amendment to Use Permit between Laura Bertone and the Treasure Island Development Authority.

Prepared by Marc McDonald, Facilities Manager  
For Mirian Saez, Director of Island Operations

**Resolution Authorizing the Director of Island Operations to Extend the Use Permit with Laura Bertone for Use of a Portion of Pier One Through November 30, 2007 and to Increase the Permit Fee Three Percent.**

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and,

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated February 6, 1998; and,

WHEREAS, On August 7, 2001, the Authority issued a six-month Use Permit to Laura Bertone ("Permittee") for the use of a portion of Pier One on Treasure Island; and,

1 WHEREAS, The Authority has subsequently approved four extensions of the term of  
2 the Permit; and,

3 WHEREAS, The term of the current extension expired on May 31, 2007; and,  
4 WHEREAS, Project Staff has negotiated an extension of the term of the Permit through  
5 November 30, 2007 and an increase in the permit fee from One Thousand Sixty Dollars and  
6 Ninety Cents to (\$1,060.90) to One Thousand Ninety Three Dollars (\$1,093) per month; and,

7 WHEREAS, The Permittee is current in all obligations to the Authority and Project Staff  
8 recommends the extension of the Permit under the same terms and conditions; now,  
9 therefore, be it

10 RESOLVED, That the Authority Board of Directors hereby approves and authorizes the  
11 Director of Island Operations to execute the Fifth Amendment to Use Permit (the "Fifth  
12 Amendment") between Permittee and the Authority in substantially the form of agreement  
13 attached hereto as Exhibit A; and be it

14 FURTHER RESOLVED, That entering into the Fifth Amendment will serve the goals of  
15 the Authority and the public interests of the City, and the terms and conditions of the Fifth  
16 Amendment are commercially reasonable.

17  
18  
19 **CERTIFICATE OF SECRETARY**

20 I hereby certify that I am the duly elected Secretary of the Treasure Island  
21 Development Authority, a California nonprofit public benefit corporation, and that the  
22 above Resolution was duly adopted and approved by the Board of Directors of the  
23 Authority at a properly noticed meeting on June 13, 2007.

24 \_\_\_\_\_  
25 John Elberling, Secretary



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## FIFTH AMENDMENT TO USE PERMIT

**THIS FIFTH AMENDMENT TO USE PERMIT** (this "Amendment") dated for reference purposes only as of June 1, 2007, is made by and between the TREASURE ISLAND DEVELOPMENT AUTHORITY ("Authority") and LAURA T. BERTONE OF PAX FLUID SYSTEMS, ("Permittee").

### RECITALS

WHEREAS, the Authority and Permittee entered into that certain Use Permit dated August 7, 2001 (the "Permit"), whereby the Authority conferred upon Permittee a personal, non-exclusive and non-possessory privilege to enter upon and use a portion of Pier 1 as depicted thereon in Exhibit B (the "Premises") attached to the Permit; and

WHEREAS, on April 10, 2002, the Authority amended the Permit to extend the term thereof to December 31, 2004; and

WHEREAS, on May 12, 2004, the Authority amended the Permit to extend the term thereof to December 31, 2005; and

WHEREAS, on January 1, 2006, the Authority amended the Permit to extend the term thereof to May 31, 2006; and

WHEREAS, on May 1, 2006, the Authority amended the Permit to extend the term thereof to May 31, 2007, and to increase the permit fee to \$1,060.90; and,

WHEREAS, the Parties wish to further amend the Permit to extend the term thereof through November 30, 2007, subject to the terms and conditions of the Permit.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Authority and Permittee agree to amend the Permit as follows:

1. Paragraph 8 of the Permit is amended to read as follows:

**"8. Term of Permit.** The privilege conferred to Permittee pursuant to this Permit shall begin at 6:00 a.m. on Monday, February 4, 2002 to use Pier 1 and continue on a month-to-month basis not to exceed November 30, 2007. Either Party may, in its sole discretion, terminate this Permit by giving thirty (30) days prior written notice to the other Party. In the event that the Master Lease terminates for any reason, Permittee agrees that this Permit shall terminate immediately upon the termination of the Master Lease. "

2. Sentence One, Paragraph 23 of the Permit is amended to read as follows:

**23. Permit Fees; Liquidated Damages for Failure to Surrender as Required; Annual Adjustments.** Permittee shall pay to Authority a monthly non-refundable permit fee in the amount of One Thousand Ninety-Three Dollars (\$1,093), due and payable on the first day of each month.

3. Except as expressly amended in this Fifth Amendment, all other terms and conditions of the Permit shall remain in full force and effect.

Permittee and Authority have executed this Fifth Amendment in triplicate as of the date first written above.

**PERMITTEE:**  
**LAURA T. BERTONE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**AUTHORITY:**  
**TREASURE ISLAND DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
Mirian Saez, Director of Island Operations

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA**  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney





**AGENDA ITEM 9**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of June 13, 2007**

**Subject:** Resolution Authorizing a Fifth Amendment to the Contract with CH2M Hill  
Terminating the Contract and Reconciling Amounts Due Thereunder (*Action Item*)

**Contact** Jack Sylvan, Office of Base Reuse and Development

**BACKGROUND**

In May 2003, the Authority entered into a contract with CH2M Hill, which was selected via a competitive process, to provide environmental engineering services in support of the Authority's negotiations with the US Navy for an Early Transfer of environmental cleanup responsibilities. The original contract included a not-to-exceed amount of \$302,500 and anticipated Early Transfer negotiations with the Navy being completed by 2004. The timeframe for Early Transfer negotiations took longer than anticipated and staff brought before the Authority an amended scope of work and budget in order to continue exploring the feasibility of an Early Transfer with the Navy. In November 2004, the Authority approved a second amendment to the contract that separated the scope of work into three distinct phases.

**DISCUSSION**

In early 2003, when the Authority chose to select an environmental engineering contractor for negotiations with the Navy, it was assumed that property and environmental cleanup responsibility would be transferred to the Authority via an Early Transfer and that this transfer of responsibilities would predate any agreements with a master developer. Based on that, it made sense for the Authority to assume it would enter into a guaranteed, fixed-price contract with an environmental remediation firm to expedite cleanup of the property in advance of redevelopment activities.

At the request of the Navy, discussions regarding the property transfer under an Economic Development Conveyance have extended the Early Transfer discussions. In the meantime, substantial progress has been made on the development plans with the master developer, Treasure Island Community Development, LLC (TICD) culminating in endorsement by the Authority Board and San Francisco Board of Supervisors of a Development Plan and Term Sheet for the redevelopment of the island during Fall 2006. Because of this continued progress, it is now likely that the timing of transfer of property and environmental remediation responsibility under an Early Transfer from the Navy will be within a similar timeframe as the development agreements, environmental approvals and other necessary approvals that will facilitate initial

infrastructure improvements at Treasure Island. In short, at or near the time the property transfers there is likely to be a master developer with project approvals who will be responsible for coordinating infrastructure and environmental cleanup activities synchronized with development of pads for buildings, transportation improvements, etc. In this scenario, it is more efficient from an overall project management standpoint for TICD to have the contractual relationship with an environmental engineering firm with responsibility for conducting any and all remediation not completed by the Navy, rather than the Authority having its own environmental engineering firm working in the middle of the rest of the infrastructure and remediation activities.

Consequently, staff believes that the scenario and reasons under which the Authority chose to select its own environmental remediation contractor have changed and it no longer makes sense to utilize the services of CH2M Hill. TICD will hire an environmental engineering firm to assist in the negotiations with the Navy and the Authority will continue to retain the services of Geomatrix acting in the role of peer reviewer to represent the interests of the Authority.

### **Proposed Contract Amendment and Termination**

Currently the contract with CH2M Hill contains two distinct phases of work and anticipated a third phase:

- *Phase 1:* negotiating the key terms of agreements (term sheet level agreements) with the Navy, the environmental regulatory agencies, and an insurance provider needed to achieve a successful Early Transfer.
- *Phase 2:* Negotiate and draft the final form of the legally binding agreements with the Navy, environmental regulatory agencies and insurance provider; and, negotiate a Guaranteed Fixed Price Contract (GFP Contract) for remediation services with CH2M Hill.
- *Anticipated Phase 3:* CH2M Hill remediation under the terms of the GFP Contract

The contract with CH2M Hill specified that the Authority would pay only a portion of CH2M Hill's actual costs for phases 1 and 2. CH2M Hill agreed to this as a business development expense as a means to get what might be a multi-million dollar remediation contract. Consequently, of the total budget of \$1,324,000 for Phases 1 and 2, the Authority was only required to pay \$762,000.

CH2M Hill has completed all of its Phase 1a work and the majority of the Phase 1b work. CH2M Hill has invoiced the Authority for approximately \$500,000 of work against approximately \$940,000 of actual expenditures. All of CH2M Hill's work will be useable by the Authority, working with Geomatrix, and TICD, working with TICD's environmental engineering consultant, in the future negotiations with the Navy regarding environmental cleanup and an Early Transfer.

The proposed contract amendment would (i) delete Phase 2 of the scope of services and budget, thereby terminating the contract with CH2M Hill; and (ii) reconcile the Phase 1 budget to accurately reflect the work performed by CH2M Hill.

**Budget Considerations**

The funds to pay CH2M Hill were included in the FY 2006-2007 budget and will be 100 percent reimbursed by TICD under the terms of the Exclusive Negotiating Agreement between the Authority and TICD.

**RECOMMENDATION**

Staff recommends approval of the contract amendment.

**EXHIBITS**

A Fifth Amendment to Contract with CH2M Hill



1 [Authorizing termination of the contract with CH2M Hill]

2 **AUTHORIZING AN AMENDMENT TO THE CONTRACT WITH CH2M HILL TO TERMINATE**  
3 **THE CONTRACT AND RECONCILE AMOUNTS DUE THEREUNDER.**

4 WHEREAS, Former Naval Station Treasure Island is a military base located on  
5 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by  
6 the United States of America (the "Federal Government"); and,

7 WHEREAS, The Base was selected for closure and disposition by the Base  
8 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
9 subsequent amendments; and,

10 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
11 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
12 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
13 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
14 conversion of the Base for the public interest, convenience, welfare and common benefit of  
15 the inhabitants of the City and County of San Francisco; and,

16 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
17 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
18 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
19 as a redevelopment agency under California redevelopment law with authority over the Base  
20 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the  
21 Base which are subject to Tidelands Trust, vested in the Authority the authority to administer  
22 the public trust for commerce, navigation and fisheries as to such property; and,

23 WHEREAS, The Tidelands Trust prohibits the sale of trust property into private  
24 ownership, generally requires that Tidelands Trust property be accessible to the public and  
25

1 encourages public-oriented uses of Trust property that, among other things, attract people to  
2 the waterfront, promote public recreation, protect habitat and preserve open space; and,

3 WHEREAS, In December 2002, the Authority formally requested that the Navy  
4 commence negotiating an "Early Transfer" of the Base to the Authority pursuant to the  
5 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the  
6 Defense Environmental Restoration Program ("DERP"); and,

7 WHEREAS, Under the DERP, the Navy is authorized to enter into an agreement with  
8 local agencies, such as the Authority, to carry out aspects of the Navy's remedial obligations  
9 with funds provided by the Navy after an early transfer by Finding of Suitability for Early  
10 Transfer (FOSET); and,

11 WHEREAS, The terms for transferring the Navy's remedial obligations to the Authority,  
12 including the amount of funds to be made available for investigation and remediation of  
13 contamination at the Base, will be set forth in an Environmental Services Cooperative  
14 Agreement ("ESCA"), to be negotiated between the Navy and the Authority; and,

15 WHEREAS, To ensure that the Authority can complete investigation and remediation  
16 of the Base as contemplated by the ESCA (the "Remediation"), the Authority anticipated  
17 entering into a guaranteed fixed-price ("GFP") contract with an environmental engineering and  
18 remediation contractor (the "GFP Contractor") to undertake the Remediation; and,

19 WHEREAS, On February 12, 2003, the Authority authorized a contract with Geomatrix  
20 to assist in preparing a Request for Qualifications ("RFQ") for a GFP Contractor; and,

21 WHEREAS, On March 12, 2003, the Authority authorized the Executive Director to  
22 issue the RFQ; and,

23 WHEREAS, On March 17, 2003, the RFQ was issued to approximately 65 interested  
24 parties, and a Supplement to the RFP was issued on April 8, 2003; and,

1 WHEREAS, CH2M Hill was identified by a Selection Committee as the most qualified  
2 candidate to perform the scope of work set forth in the RFQ; and,

3 WHEREAS, On May 14, 2003, the Authority approved a contract (the "Contract") with  
4 CH2M Hill to provide environmental engineering services and assist the Authority in  
5 negotiating an Early Transfer of the Base with the Navy; and,

6 WHEREAS, Under that Contract, CH2M Hill is required to, among other things, work  
7 with the Authority staff and consultants and meet and consult with the Navy, regulators and  
8 other interested parties, to prepare a cost estimate and scope of work for the remediation  
9 effort; assist the Authority in negotiating the terms and language of an ESCA, Consent  
10 Agreement and insurance policies with the relevant parties; and negotiate a GFP contract  
11 with the Authority, including satisfactory environmental insurance; and,

12 WHEREAS, On November 10, 2004, the Authority approved an amendment to the  
13 Contract to modify the scope of services and increase the amount of the Contract by an  
14 additional \$200,000 for a total not to exceed amount of \$302,500 for Phase 1 services; and,

15 WHEREAS, On June 8, 2005, the Authority approved an amendment to the Contract  
16 extending the term for 12 months through June 30, 2006; and,

17 WHEREAS, On July 26, 2006, the Authority retroactively extended the term of the  
18 Contract by an additional 12 months with no increase in the total amount of the Contract; and

19 WHEREAS, The schedule for the negotiations with the Navy has been significantly  
20 extended; and,

21 WHEREAS, The Authority and Treasure Island Community Development, LLC, the  
22 selected master developer of the Base, completed a Development Plan and Term Sheet for  
23 the Redevelopment of Naval Station Treasure Island, which the Authority Board and the  
24 Board of Supervisors endorsed in Fall 2006; and,

1 WHEREAS, Due to the extended schedule of the Navy negotiations, and the  
2 substantial progress on the plans and negotiations for the redevelopment of the Base, project  
3 staff believes that at or near the time the Base transfers from the Navy to the Authority, there  
4 is likely to be a master developer with project approvals who will be responsible for  
5 coordinating infrastructure and environmental cleanup activities with the development of  
6 building pads and other improvements; and,

7 WHEREAS, Project staff believes that it is more efficient from an overall project  
8 management standpoint for the master developer to have the contractual relationship with the  
9 environmental remediation contractor who will complete any and all remediation not  
10 completed by the Navy in coordination with the master developer's infrastructure and other  
11 remediation activities; and,

12 WHEREAS, Project staff recommends that the Authority enter into an amendment to  
13 the Contract with CH2M Hill to (i) delete Phase 2 of the scope of services and budget, thereby  
14 terminating the Contract with CH2M Hill, and (ii) reconcile the Phase 1 budget to accurately  
15 reflect the services performed by CH2M Hill to date; now, therefore be it

16 RESOLVED, That the Authority hereby approves and authorizes the Director of Island  
17 Operations to execute an amendment to the Contract with CH2M Hill in substantially the form  
18 attached hereto as Exhibit A.

CERTIFICATE OF SECRETARY

*I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on June 13, 2007.*

---

John Elberling, Secretary





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**TREASURE ISLAND DEVELOPMENT AUTHORITY  
CITY AND COUNTY OF SAN FRANCISCO**

**FIFTH AMENDMENT**

THIS FIFTH AMENDMENT (this "Amendment") is made as of June 13, 2007, in San Francisco, California, by and between CH2M Hill Constructors, Inc., a Delaware corporation, ("Contractor"), and the Treasure Island Development Authority, a municipal corporation ("Authority"), acting by and through its Director of Island Operations ("Director of Island Operations").

**RECITALS**

WHEREAS, Authority and Contractor have entered into the Agreement (as defined below); and

WHEREAS, Authority and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the Authority agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated May 14, 2003 between Contractor and Authority, as amended by a First Amendment dated July 1, 2004, a Second Amendment dated September 16, 2004, a Third Amendment dated July 1, 2005, and a Fourth Amendment dated July 1, 2006.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

(a) **Appendix A, Services to be Provided by Contractor,** is hereby amended to read as follows:

**Appendix A  
Services to be Provided by Contractor**

**1. Description of Services**

CH2M Hill ("Contractor") shall provide all labor, materials, and equipment necessary to provide environmental remediation services in support of an Early Transfer of former naval station Treasure Island to the Authority as stated in the Request for Qualifications for a Contractor to Provide Environmental Engineering and Remediation Services at former naval station Treasure Island issued March 17, 2003.

**PHASE 1a SERVICES**

**Task One: Data Evaluation**

Contractor will review Navy and other investigator reports of historical studies, field investigations, remedial designs, pilot studies, O&M, site closure, ground water monitoring reports and other available information pertaining to the environmental conditions and status of remediation at former naval station Treasure Island.

#### Task Two: Meetings

Contractor will participate in meetings, technical presentations and substantive discussions with the Authority, Navy, State of California Department of Toxic Substance Control (DTSC), regulatory agencies, insurers, and public to discuss the early transfer, technical issues, long term reuse plan, and other topics related to remediation at former naval station Treasure Island.

#### Task Three: Calculation of Navy Cost to Complete

Contractor will evaluate and prepare cost estimate of the Navy's Cost to Complete (CTC) based on their current remediation schedule, efficiency factors, unknowns discovered during remediation, contingencies and overruns on known Scope of Work (SOW), existing Program Management and overhead costs.

#### Task Four: TICD Development Integration with GFPC

Contractor will work with TIDA and TICTD to determine differences between Environmental Services Cooperative Agreement (ESCA) SOW and actual development needs such as asbestos, lead-based paint remediation and incidental expenses, evaluate integration of remediation with the development, prepare SOW and cost estimates for differences, prepare presentations, attend meetings and prepare an updated SOW and cost estimate for the Guaranteed Fixed Price (GFP) Contract and insurance policies.

#### Task Five: Presentation of Results

Contractor will make technical presentations and participate in meetings with the Authority and the City to present results of its remediation cost estimate and to initiate the process to secure GFP insurance.

### PHASE 1b SERVICES

#### Task One: Navy Negotiations to Reach ESCA Term Sheet and Meetings

Provide assistance in the development of negotiation strategies and cost negotiations with the Navy, refine and finalize ESCA offer and develop ESCA Term Sheet. Contractor will also maintain a limited participation in Navy activities in order to stay abreast of remediation efforts and ongoing studies, attendance at monthly meetings such as BCT, RAB, technical scoping meetings, meetings to review Navy status of investigations, initial findings meetings, regulator review comment meetings, and other meetings related to Navy activities and documents. Task duration is assumed to run from October 2004 through March 2005

#### Task Two: Regulatory Negotiations to Reach ESCA Term Sheet

Contractor will coordinate with the regulatory agencies, to the extent necessary, to reach a ESCA Term Sheet. Coordination is anticipated to include meetings to discuss regulatory issues related to site closure, potential resolution of differences between Navy and ESCA SOW, discussion of interim and potential final land use or institutional controls.

#### Task Three: Insurance Negotiations to Reach ESCA Term Sheet

Contractor will coordinate with the Insurance company, to the extent necessary, to prepare an ESCA Term Sheet. Coordination is anticipated to include meetings to convey GFP Contract SOW and revised remediation cost estimate, and obtain preliminary indications for the Cost Cap Environmental Insurance Policy.

#### Deleted: PHASE TWO SERVICES¶

¶ Phase Two services would only be initiated if TIDA and CH2M Hill successfully reach agreement with the Navy on a term sheet for the ESCA. Upon agreement by TIDA and the Navy on a term sheet for transfer of environmental responsibilities at former Naval Station Treasure Island, approval for entering into the Phase Three services and budget would be required by the TIDA Board of Directors to proceed with the scope of work outlined below.¶

¶ Task One: Finalize ESCA Negotiations and Agreements with the Navy¶ Contractor will provide advice and assistance in the development of final negotiations with the Navy, refine and finalize ESCA offer. Negotiate terms and conditions for ESCA and Navy retained sites and sites transferred under the ESCA.¶

¶ Task Two: Finalize Regulatory Negotiations¶ Contractor will lead negotiations for the Consent Agreement and provide technical support for Land Use Controls and Institutional Controls, provide technical assistance with other agreements for regulatory agencies such as Regional Water Quality Control Board (RWQCB), State Lands Commission (SLC), and others.¶

¶ Task Three: Finalize Insurance Negotiations¶ Contractor will lead final price and term negotiations for a Cost Cap environmental insurance policy, and provide technical support for the Pollution Legal Liability policy negotiations. Prepare final technical presentations and provide final ESCA SOW and cost estimates for the GFP Contract SOW covered under the policy.¶

¶ Task Four: Guaranteed Fixed Price Remediation Contract Negotiations¶ Contractor will assist, support and participate with the Authority in negotiating a Guaranteed Fixed Price Contract with Contractor to perform the remediation. ¶

(b) Appendix B, Calculation of Charges, is hereby amended to read as follows:

#### Appendix B Calculation of Charges

##### Phase 1a Budget

			Amount to be Paid by
--	--	--	----------------------

Task	Description	Budget	Authority
1	Data evaluation	\$60,000	\$30,000
2	Meetings	\$55,000	\$27,500
3	Calculation of Navy Cost to Complete	\$90,000	\$67,500
4	TICD Development Integration with GFPC	65,000	\$65,000
5	Presentation of Results	\$45,000	\$22,500
TOTAL		\$315,000	\$212,500

Compensation for Phase 1a services shall be made as one lump sum payment on or before the last day of the month following the month in which Contractor submits an invoice for the completion of Phase 1a work, and the Director of Island Operations, in his or her sole discretion, concludes the Phase 1a work has been performed successfully. Compensation for Phase 1a shall not exceed two hundred twelve thousand five hundred dollars (\$212,500).

Deleted: Executive

#### Phase 1b Budget

Task	Description	Budget	Amount to be Paid by Authority
1	Navy negotiations to Reach ESCA Term Sheet and Meetings	<del>\$235,000</del>	<del>\$135,000</del>
2	Regulatory negotiations to Reach ESCA Term Sheet	<del>\$180,000</del>	<del>\$105,000</del>
3	Insurance negotiations to Reach ESCA Term Sheet	<del>\$75,000</del>	<del>\$50,000</del>
Total		<del>\$490,000</del>	<del>\$290,000</del>

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Deleted: 90,000

Deleted: Executive

Deleted: 90,000

Compensation for Phase 1b services shall be made in monthly payments on or before the last day of each month for work that the Director of Island Operations, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. Compensation for Phase 1b shall not exceed two hundred ninety thousand dollars (\$290,000). Compensation for Phase 1 services (Phases 1a and 1b) shall not exceed five hundred two thousand five hundred dollars (\$502,500).

Deleted: Phase II Budget

Deleted: 9

Task

[1]

#### (c) Section 5, Compensation, is hereby amended to read as follows:

Compensation for Phase 1a services shall be made as one lump sum payment on or before the last day of the month following the month in which Contractor submits an invoice for the completion of Phase 1a work, and the Director of Island Operations, in his or her sole discretion, concludes the Phase 1a work has been performed successfully. Compensation for Phase 1a shall not exceed two hundred twelve thousand five hundred dollars (\$212,500).

Deleted: Executive

Compensation for Phase 1b services shall be made in monthly payments on or before the last day of each month for work that the Director of Island Operations, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. Compensation for Phase 1b shall not exceed two hundred ninety thousand dollars (\$290,000). Compensation for Phase 1 services (Phases 1a and 1b) shall not exceed five hundred two thousand five hundred dollars (\$502,500).

Deleted: Executive

Deleted: 90,000

Invoices shall identify personnel performing work under this Agreement, their hourly rates, and number of hours worked per task.

In no event shall Authority and/or City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Form 7, "Prime Consultant/Joint Venture Partner(s) and Sub-consultant Participation Report." If HRC Form 7 is not submitted with Contractor's invoice, the Controller will notify the Authority, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Form 7 is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Form 7 is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Form 9, "Sub-Consultant Payment Affidavit," verifying that all subcontractors have been paid and specifying the amount.

**3. Director of Island Operations.** All references in the Agreement to "Executive Director" are hereby amended to refer to the "Director of Island Operations."

**4. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

**5. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and Authority have executed this Amendment as of the date first referenced above.

**Deleted:** Phase 2 services would only be initiated if TIDA successfully reaches agreement with the Navy on a term sheet for the Environmental Services Cooperative Agreement. Upon agreement by TIDA and the Navy on a term sheet for transfer of environmental responsibilities at former Naval Station Treasure Island, approval for entering into the Phase 2 services and budget would be required by the TIDA Board of Directors to proceed with the scope of work outlined in Appendix A. ¶ Compensation for Phase 2 services shall be made in monthly payments on or before the last day of each month for work that the Executive Director, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month. The Contractor shall invoice the Authority for the amounts shown as "Budget" in Appendix II, and the Authority will pay only one half of the amount invoiced, up to the not to exceed amount of \$459,500. Compensation for Phase 2 shall not exceed four hundred fifty nine thousand five hundred dollars (\$459,500). ¶ If the Environmental Services Cooperative Agreement (ESCA), Consent Agreements, and Guaranteed Fixed Price Contract (GFPC) are successfully negotiated, the Contractor will credit the amount paid by the Authority to the Contractor under Phase 2 of this Agreement to the invoices submitted by the Contractor under the Guaranteed Fixed Price Contract. ¶

**Deleted:** In no event shall the total amount of this Agreement exceed seven hundred sixty two thousand dollars (\$762,000).



AUTHORITY

\_\_\_\_\_  
Mirian Saez, Director of Island Operations  
Treasure Island Development Authority

Approved as to form

Dennis J. Herrera  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney

CONTRACTOR

By signing this Amendment, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

\_\_\_\_\_  
James Greeley, Vice President  
CH2M HILL Constructors, Inc.  
115 Perimeter Place N.E. Suite 700  
Atlanta, GA 30346  
(770) 604-9095  
FEIN: 84-1230545  
Vendor No: 62917



Task	Description	Budget	Amount to be Paid by Authority**
1	Finalize Navy ESCA negotiations	\$315,000	\$157,500
2	Finalize Regulatory negotiations	\$371,000	\$185,500
3	Finalize Insurance negotiations	\$233,000	\$116,500
4	GFP contract negotiations	n/a	n/a
Total		\$919,000	\$459,500

\*\*Only paid by Authority if Early Transfer and GFP Contract are not consummated, otherwise 100% offset against GFP Contract invoices.

Compensation for Phase II services shall be made in monthly payments on or before the last day of each month for work that the Executive Director, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month. The Contractor shall invoice the Authority for the amounts shown as "Budget" and the Authority will pay only one half of the amount invoiced up to the not to exceed amount of \$459,500. Compensation for Phase II shall not exceed four hundred fifty nine thousand five hundred dollars (\$459,500).

If the Environmental Services Cooperative Agreement, Consent Agreements, and Guaranteed Fixed Price Contract are successfully negotiated, the Contractor will credit the amount paid by the Authority to the Contractor under Phase II of this Agreement to the invoices submitted by the Contractor under the Guaranteed Fixed Price Contract.

Invoices shall identify personnel performing work under this Agreement, their hourly rates, and number of hours worked per task. The hourly rates to be charged by job classification are listed below. In no event shall the total amount of this Agreement exceed seven hundred sixty two thousand dollars (\$762,000).









**AGENDA ITEM 11**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of June 13, 2007**

**Subject:** Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with the Treasure Island Homeless Development Initiative for the Period from July 1, 2007 to June 30, 2008 (Consent Item).

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

**BACKGROUND**

The Treasure Island Homeless Development Initiative ("TIHDI") is a consortium of nonprofit organizations that provide services to homeless and other economically disadvantaged San Francisco residents. TIHDI was organized to utilize the resources of the former Naval Station Treasure Island to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

The proposed Professional Services Agreement (the "Agreement") between the Treasure Island Development Authority (the "Authority") and TIHDI continues TIHDI's role in (i) the coordination and facilitation of community-based homeless service organizations in Treasure Island community activities; (ii) participation in the development process to support development plans which implement the proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property on Treasure Island and Yerba Buena Island (the "TIHDI Agreement") ; (iii) development of housing units allocated to TIHDI under the TIHDI Agreement; and (iv) operation of a job broker system and economic self-sufficiency programs for Island residents. The Authority agrees to compensate TIHDI an amount not to exceed One Hundred and Fifteen Thousand (\$115,000) for services from July 1, 2007 through June 30, 2008. The recommended compensation for TIHDI will come from the revenues generated by leasing Treasure Island facilities.

The proposed agreement with TIHDI differs in two respects from the prior year Agreement.

First, in Fiscal Year 2006-2007, the Authority provided TIHDI \$100,000 to fund activities of the Boys and Girls Club on Treasure Island. Project Staff proposes deletion of One Hundred Thousand Dollars (\$100,000) from the Agreement and reallocating those funds to a contract directly between the Authority and the Boys and Girls Club. In July of 2007, Project Staff will recommend approval of a \$100,000 services agreement with the Boys & Girls Club along with a sublease.

Second, Project Staff proposes to delete Nine Thousand Six Hundred (\$9,600) from the Agreement because TIHDI was using the funds to pay an obligation to the Authority. In accord with the terms of the prior service agreements, TIHDI was provided \$9,600 per year which was used to satisfy a \$9,600 Common Area Maintenance Charge to the Authority. The essence of the

arrangement was that the Authority was paying TIHDI \$9,600 to pay the Authority \$9,600. Project Staff has determined that this arrangement was an unnecessary administrative burden on both parties. Further, the imposition of a Common Area Maintenance Charge as an obligation of a Services Agreement is inappropriate. The appropriate use of a Common Area Maintenance Charge is as a reimbursement in a lease or sublease arrangement, not a professional services agreement. The \$9,600 payment has been deleted from the Agreement and the obligation to pay the Authority a Common Area Maintenance Charge has been deleted from the Agreement.

In addition to the Agreement, a summary of TIHDI's goals and accomplishments in FY 2006-2007 and TIHDI's projected overall FY 2007-2008 budget are attached as exhibits.

### RECOMMENDATION

Staff recommends approval of the Professional Services Agreement between the Treasure Island Development Authority and the Treasure Island Homeless Development Initiative.

### EXHIBITS

A. Professional Services Agreement between the Treasure Island Development Authority and the Treasure Island Homeless Development Initiative.

B. Summary of TIHDI's goals and accomplishments in FY 2006-2007.

1 [TIHDI Professional Services Agreement]

2 **Resolution Authorizing the Director of Island Operations to Execute a Professional**  
3 **Services Agreement with the Treasure Island Homeless Development Initiative for the**  
4 **Period from July 1, 2007 to June 30, 2008.**

5  
6 **WHEREAS**, Naval Station Treasure Island is a military base located on Treasure  
7 Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United  
8 States of America ("the Federal Government"); and,

9 **WHEREAS**, Treasure Island was selected for closure and disposition by the Base  
10 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
11 subsequent amendments; and,

12 **WHEREAS**, In 1995, the General Services Administration and the Bureau of Land  
13 Management determined that Yerba Buena Island was surplus to the Federal Government's  
14 needs and could be transferred to the administrative jurisdiction of the Department of Defense  
15 under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure  
16 Island; and,

17 **WHEREAS**, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
18 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
19 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
20 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
21 conversion of the Base for the public interest, convenience, welfare and common benefit of  
22 the inhabitants of the City and County of San Francisco; and,

23 **WHEREAS**, Under the Treasure Island Conversion Act of 1997, which amended  
24 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
25 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority

1 as a redevelopment agency under California redevelopment law with authority over the Base  
2 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the  
3 Base which are subject to Tidelands Trust, vested in the Authority to administer the public  
4 trust for commerce, navigation and fisheries as to such property; and

5 **WHEREAS**, The Board of Supervisors approved the designation of the Authority as a  
6 redevelopment agency for Treasure Island in 1997; and,

7 **WHEREAS**, The City and County of San Francisco negotiated a proposed Base  
8 Closure Homeless Assistance Agreement and Option to Lease Real Property with the  
9 Treasure Island Homeless Development Initiative ("TIHDI"), a consortium of nonprofit  
10 corporations organized to utilize the resources of former naval base Treasure Island available  
11 to help fill gaps in the continuum of care for homeless persons and families, pursuant to the  
12 Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

13 **WHEREAS**, On July 25, 1996, the Board of Supervisors passed Resolution 672-96,  
14 authorizing sole source negotiations with TIHDI and its member organizations; and,

15 **WHEREAS**, The Authority wishes to support TIHDI pursuant to the Base Closure  
16 Community Redevelopment and Homeless Assistance Act of 1994 by entering into a  
17 Professional Services Agreement (the "Agreement") under which TIHDI will perform the  
18 services described in the Agreement, including services related to the implementation of the  
19 Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

20 **WHEREAS**, TIHDI represents and warrants that it is qualified to perform the services  
21 required by the Authority as set forth under the Agreement; and,

22 **WHEREAS**, The Authority has negotiated with TIHDI to reach agreement on the scope  
23 of work, and budget for the services shown in the Agreement; now, therefore be it  
24  
25







RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT



**Treasure Island Development Authority**  
**410 Avenue of the Palms**  
**Treasure Island**  
**San Francisco, California 94130**

**Agreement between the Treasure Island Development Authority and**

**TREASURE ISLAND HOMELESS DEVELOPMENT INITIATIVE**

This Agreement is made this 1<sup>ST</sup> day of **July**, 2007, in the City and County of San Francisco, State of California, by and between: the Treasure Island Homeless Development Initiative, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a nonprofit public benefit corporation hereinafter referred to as the "Authority," acting by and through its Director of Island Operations, hereinafter referred to as the "Director."

**Recitals**

WHEREAS, the **Treasure Island Development Authority** ("Department") wishes to utilize the resources of the former Naval Station Treasure Island to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by Authority as set forth under this Contract; Now, THEREFORE, the parties agree as follows:

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco (the "City"). Charges will accrue only after prior written authorization certified by the Controller, and the amount of Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority budget decisions are subject to the discretion of the Authority's Board of Directors and the City's Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**2. Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from **July 1, 2007 to June 30, 2008.**

3. **Effective Date of Agreement**

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. **Services Contractor Agrees to Perform**

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. **Compensation**

Compensation shall be made in monthly payments on or before the **Tenth** day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Island Operations, in his or her sole discretion, concludes has been performed as of the **Final** day of the immediately preceding month. In no event shall the amount of this Agreement exceed **One Hundred and Fifteen Thousand Four Hundred Dollars and no cents (\$115,400)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by **the Authority** as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

6. **Guaranteed Maximum Costs**

a. The Authority's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the Authority are not authorized to request, and the Authority is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the Authority are not authorized to offer or promise, nor is the Authority required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. **Payment; Invoice Format**

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by Authority to Contractor shall be subject to audit by City.

Payment shall be made by Authority to Contractor at the address specified in the section entitled "Notices to the Parties."

#### **8. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **9. Deleted by Agreement of Parties.**

#### **10. Taxes**

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the Authority to enable the Authority to comply with any reporting requirements for possessory interests that are imposed by applicable law.

**11. Payment Does Not Imply Acceptance of Work**

The granting of any payment by Authority, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and in such case must be replaced by Contractor without delay.

**12. Qualified Personnel**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

**13. Responsibility for Equipment**

Authority shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority.

**14. Independent Contractor; Payment of Taxes and Other Expenses**

**a. Independent Contractor**

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with Authority, nor be entitled to participate in any plans, arrangements, or distributions by Authority pertaining to or in connection with any retirement, health or other benefits that Authority may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**b. Payment of Taxes and Other Expenses.**

Should Authority, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

**15. Insurance**

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the US Navy, the Treasure Island Development Authority, and the City and County of San Francisco, their Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to Authority of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

**Treasure Island Development Authority  
410 Avenue of the Palms  
Treasure Island  
San Francisco, CA. 94130  
Attn: Director of Island Operations**

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to Authority certificates of insurance and additional policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to Authority, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor hereunder.

## **16. Indemnification**

Contractor shall indemnify and save harmless Authority and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by Authority or others, regardless of

the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any claims against the Authority.

In addition to Contractor's obligation to indemnify Authority, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

Contractor shall indemnify and hold Authority harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

**a. General Indemnity**

To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the Authority, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

**b. Limitations**

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

**c. Copyright Infringement**

Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the Authority, or any of its boards, commissions, officers, or employees of articles or services to be supplied in then performance of Contractor's services under this Agreement.

#### 17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that Authority may have under applicable law.

#### 18. Liability of Authority

AUTHORITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

#### 19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, Authority will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of **Four Hundred and Fifty Dollars (\$450)** per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that Authority will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. Authority may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Contractor's failure to deliver to Authority within the time fixed or such extensions of time permitted in writing by Purchasing.

#### 20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy,

insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **21. Termination for Convenience**

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall

have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that Authority designates to be completed prior to the date of termination specified by Authority.

(7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which services or work Authority has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to Authority against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's

estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

## **22. Rights and Duties upon Termination or Expiration**

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

## **23. Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

## **24. Proprietary or Confidential Information of Authority**

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by Authority to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

## **25. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, or by fax, and shall be addressed as follows:

To Authority: **Treasure Island Development Authority**  
**410 Avenue of the Palms**  
**Treasure Island**  
**San Francisco, CA. 94130**  
**Attn: Mirian Saez, Director of Island Operations**  
**Fax: (415) 274-0299**

To Contractor: **Treasure Island Homeless Development Initiative**

410 Avenue of the Palms  
Treasure Island  
San Francisco, CA. 94130  
Attn: Sherry Williams, Executive Director  
Fax: (415) 834-9134

Any notice of default must be sent by registered mail.

**26. Ownership of Results**

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**27. Works for Hire**

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**28. Audit and Inspection of Records**

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority by this Section.

**29. Subcontracting**

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

**30. Assignment**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement.

### **31. Non-Waiver of Rights**

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

### **32. Earned Income Credit (EIC) Forms**

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days. Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Authority may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

### **33. Local Business Enterprise Utilization; Liquidated Damages**

#### **a. The LBE Ordinance**

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle Authority, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies

provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

**b. Compliance and Enforcement**

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

**34. Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate**

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**b. Subcontracts**

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits**

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract**

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**e. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**35. MacBride Principles—Northern Ireland**

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**36. Tropical Hardwood and Virgin Redwood Ban**

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product

**37. Drug-Free Workplace Policy**

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

**38. Resource Conservation**

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**39. Compliance with Americans with Disabilities Act**

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**40. Sunshine Ordinance**

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**41. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority to terminate and/or not renew the Agreement, partially or in its entirety.

**42. Limitations on Contributions**

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a

combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **43. Requiring Minimum Compensation for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour for the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then that employee is covered by San Francisco's Minimum Wage Ordinance, which is Chapter 12R of the Administrative Code. As of January 1, 2007, Chapter 12R's minimum wage is \$9.14 per hour.

b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

c. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### **44. Requiring Health Benefits for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days. Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Authority shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Authority.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### **45. First Source Hiring Program**

##### **a. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**b. First Source Hiring Agreement**

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting

compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**c. Hiring Decisions**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**d. Exceptions**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**e. Liquidated Damages**

Contractor agrees:

(1) To be liable to the Authority for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the Authority's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the Authority and the public which is significant and substantial but extremely difficult to quantify; that the harm to the Authority includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the

assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the Authority suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the Authority and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the Authority suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the Authority by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the Authority is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the Authority's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**f. Subcontracts**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

#### **46. Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the Authority may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City or Authority contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

#### **47. Preservative-treated Wood Containing Arsenic**

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **48. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

#### **49. Administrative Remedy for Agreement Interpretation**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director who shall decide the true meaning and intent of the Agreement.

#### **50. Agreement Made in California; Venue**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

#### **51. Construction**

— All paragraph captions are for reference only and shall not be considered in construing this Agreement.

## **52. Entire Agreement**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

## **53. Compliance with Laws**

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

## **54. Services Provided by Attorneys**

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

## **55. Supervision of Minors**

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor.

Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default.

Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not be limited to any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

#### **56. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

#### **57. Protection of Private Information**

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the Authority may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

#### **58. Graffiti Removal**

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the Authority's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the Authority, the City and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or

marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

**59. Food Service Waste Reduction Requirements**

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, Authority will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that Authority will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Contractor's failure to comply with this provision.

**60. Slavery Era Disclosure**

a. Contractor acknowledges that this contract shall not be binding upon the Authority until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

**61. Deleted by Agreement of Parties**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

<b>TREASURE ISLAND DEVELOPMENT AUTHORITY</b>	<b>CONTRACTOR</b>
<b>Mirian Saez, Director of Island Operations Treasure Island</b>	<b>TREASURE ISLAND HOMELESS DEVELOPMENT INITIATIVE</b>
Approved as to Form:	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
Dennis J. Herrera City Attorney	I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.
By: _____ Deputy City Attorney	<b>Sherry Williams, Executive Director 410 Avenue of the Palms Treasure Island San Francisco, CA. 94130</b>
	City vendor number: <b>51465</b>

**Appendices**

- A: Services to be Provided by Contractor  
B: Calculation of Charges

Appendix A  
Services to be Provided by Contractor

1. Description of Services

Treasure Island Homeless Development Initiative ("Contractor") shall provide all labor, materials, and equipment necessary to:

- Coordinate and facilitate the participation of community-based homeless service organizations activities with all public and private agencies operating on former naval base Treasure Island in the current implementation of the Base Closure Homeless Assistance Agreement and Option to Lease Real Property.
- Coordinate and facilitate the participation of community-based homeless service organizations and coordinate activities with all public and private agencies operating on former naval base Treasure Island in the development of long term plans to implement the Base Closure Homeless Assistance Agreement and Option to Lease Real Property on Treasure Island and Yerba Buena Island.

Specifically:

- Provide consultation on the affordable housing component of the proposed development plan by TICD. This includes review of financing proposals by developer, phasing of housing, and the design and placement of housing.
- Provide input in community serving and development components, Job Broker and First Source compliance and economic development opportunities as indicated in the TIHDI Agreement.
- Operate the Job Broker System for island employers to fulfill hiring objectives outlined in their leases and/or contracts with the Treasure Island Development Authority.
- Facilitate dissemination of information to members of the Treasure Island Homeless Development Initiative regarding environmental issues impacting Treasure Island.
- Facilitate dissemination of information to members of the Treasure Island Homeless Development Initiative regarding hearings involving Treasure Island.
- Provide advice and consultation to Treasure Island Development Authority in development of objectives to fulfill hiring objectives.
- Coordinate participation of members of the Treasure Island Homeless Development Initiative where appropriate.
- Operate the "Ship Shape" as a Community Center.

2. Reports

Contractor shall submit written reports as requested by the Treasure Island Development Authority.

Format for the content of such reports shall be determined by the Treasure Island Development Authority. The timely submission of all reports is a necessary and material term and condition of this Agreement.

The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

### 3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the Treasure Island Development Authority will be Director of Island Operations.

## Appendix B

### 2007-2008 Budget for TIDA Contract with TIHDI

TIHDI Staff	
Salaries (1.35FTE)	80,400
Taxes & Benefits	15,000
Operating Expenses	20,000
TIHDI Total	115,000
Total TIHDI Contract Budget	115,400

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement as the Director of Island Operations, in her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed One Hundred and Fifteen Thousand Dollars (\$115,400.00).





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## **EXHIBIT B**

Summary of TIHDI's goals and accomplishments in FY 2006-2007



**TIHDI Final  
Report  
Contract Year 2006-2007**

**SERVICES TO BE PROVIDED BY CONTRACTOR**

Treasure Island Homeless Development Initiative ("Contractor") shall provide all labor, materials, and equipment necessary to:

**TASK ONE**

- Coordinate and facilitate the participation of community-based homeless service organizations and coordinate activities with all public and private agencies operating on former naval base Treasure Island in the development of long term plans to implement the proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property on Treasure Island and Yerba Buena Island.

Specifically:

**Provide consultation on the affordable housing component of the proposed development plan by TICD. This includes review of financing proposals by developer, phasing of housing, and the design and placement of housing.**

**Progress:** TIHDI reviewed and provided input into the revised the affordable housing financing plan by TICD. Provided specific information on TIHDI housing including units breakdown and housing finance numbers.

TIHDI also convened and coordinated activities regarding the turnover of 54 units to TIHDI from TIDA.

**Provide input in community serving and development components, Job Broker and First Source compliance and economic development opportunities as indicated in the TIHDI Agreement.**

**Progress:** Provided review and input into final jobs and economic development plan.

- Coordinate and facilitate the participation of community-based homeless service organizations activities with all public and private agencies operating on former naval base Treasure Island in the current implementation of the proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property.

Specifically:

**Operate the Job Broker System for island employers to fulfill hiring objectives outlined in their leases and/or contracts with the TIDA.**

**Progress:** Compliance with hiring objectives has been much improved this year. As a result, there was a significant increase in placements through the Job Broker System for both short term and permanent work. There were 17 short term hires by the Tri Cities Triathlon and Beyond Productions. 4 permanent hires by Rubicon. 1 permanent hire by

**TIHDI Final  
Report  
Contract Year 2006-2007**

JSCo, 2 union wage placements at Island Creative and 15 short and long term placements at Ca Logistics.

**Facilitate dissemination of information to TIHDI members regarding environmental issues impacting Treasure Island.**

**Progress:** All information disseminated as requested. Encouraged attendance at community meetings regarding current environmental clean up program in housing area, attended meeting regarding same.

**Facilitate dissemination of information to TIHDI members regarding hearings involving Treasure Island.**

**Progress:** Members were informed of and attended Board of Supervisors hearing regarding the long term development plan. Members are informed of all hearings regarding TI and were encouraged to attend when appropriate.

**Secure and manage funds for Food Pantry serving island residents.**

**Progress:** TIHDI successfully coordinates a weekly food pantry that serves an average of 67 households and 255 people per week. Food pantry is open to all residents on the island and is used by those in market rate housing as well as those in the TIHDI housing.

**TASK TWO:**

**Provide after school and summer program for island youth through a subcontract with the Boys & Girls Club.**

**Progress:** The Boys & Girls Club provided recreation programming to TI children and youth every day after school and in the summer of 2006.

**TREASURE ISLAND CLUBHOUSE  
SUMMARY OF SERVICES 2006-2007**

**Overview:**

The Clubhouse has provided quality youth development programs to its members throughout the year and has modified its program to respond to the closure of the Treasure Island Elementary in December 2005. In the 2006-2007 program year, the Club served an average of 65 youth daily. After negotiation on facility-use with SFUSD, the Clubhouse has moved successfully to its new location on the school campus that offers more space and the ability to better supervise participants.

**Population Served:**

- During the 2006 – 2007 program year, the Treasure Island Clubhouse has served 221 children and youth.

**TIHDI Final  
Report  
Contract Year 2006-2007**

**Services provided:**

**Sport, Fitness and Recreation:** Tennis, Dance, Flag Football, Hockey, Kickball, Soccer, Basketball, Volleyball, Yoga, Swimming, Sailing, Jr. Giants Baseball, Running and General Fitness Programs.

**Educational and career development:** Homework help, tutoring, science programs, outdoor education (gardening project), math and language programs, college and university bound programs, career development programs and technology programs

**Health and Life Skills:** Cooking classes for ages 10 to 12 and 13 to 17, life skills and nutrition programs.

**Arts:** Drawing, painting, drama, guitar program, crafts and dance classes.

**Leadership development:** Age oriented leadership clubs, Monthly youth recognition program.

**Summer program:** Indoor and Outdoor Sports, Environmental as well as Residential camp, Performing and Fine Arts, Educational as well as fun field trips, Cooking classes, Summer Enrichment Program, Gymnastics, Kickboxing, Sailing, Swimming Lessons, Environmental Ed, Dance Lessons, Tennis Lessons.

**Education Enhancement Program**

We are extremely proud of our new Education Enhancement program which is supervised by a credentialed teacher. This program includes: coordinating and providing staff to off island schools; providing professional tutoring to members; and increasing parent involvement. Currently 221 Club members are benefiting from this program.

**HOURS OF OPERATION**

**When School is in Session**

6 to 12	Mon thru Friday	3:00 PM to 7:00 PM
13 to 17	Mon & Wed	3:00 PM to 8:00 PM
	Fridays	3:00 PM to 10:00 PM

**Summer and School Holiday Hours**

6 to 12	Mon thru Friday	11:00 AM to 6:00 PM
13 to 17	Mon & Wed	11:00 AM to 8:00 PM
	Fridays	11:00 AM to 10:00 PM







**AGENDA ITEM 12**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of June 13, 2007**

**Subject:** Resolution Authorizing the Second Amendment to the Sublease between the Treasure Island Development Authority and the San Francisco Golden Gate Youth Rugby Club to Increase the Premises, Provide Tenant Improvement Credits, and Extend the Term on a Month-to-Month Basis through November 30, 2007. (*Action Item*)

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

**BACKGROUND:**

For over a decade, the San Francisco Golden Gate Youth Rugby Club ("Subtenant" or "SFGGYR") has been providing San Francisco youth the opportunity to play rugby. Since their arrival on Treasure Island, SFGGYR has assisted youth on Treasure Island by teaching them how to play rugby football. At least one Island youth who was introduced to the game by the Subtenant now plays competitive rugby on a regular basis.

As part of their efforts to expand community interest in sporting activities at their facility, SFGGYR has established a relationship with San Francisco Netball. The Netball players have also introduced their sport to the Island. They have held clinics at the gymnasium and regularly invite the Island community to netball games and exhibitions.

On April 13, 2005, SFGGYR entered into a Sublease (the "Original Sublease") with the Treasure Island Development Authority (the "Authority"). The premises were described as "an approximately 1,000 square foot portion of Building 34, including the improvements thereon and a parcel of land totaling approximately 54,000 square feet bounded by Avenue H, 3<sup>rd</sup> Street, Avenue I and California Avenue, hereinafter referred to as the "Athletic Field".

Monthly base rent for the premises was One Thousand Dollars (\$1,000) or \$1.00 psf for 1,000 square feet in Building 34 for use as a clubhouse, plus Five Thousand Four Hundred Dollars (\$5,400) or \$0.10 psf for 54,000 square feet of unimproved land for use as an athletic field. SFGGYR and the Authority agreed that substantial improvements to both the building and the Athletic Field were required to make them suitable for use. Therefore, the Authority authorized Tenant Improvement Credits of Sixty Four Thousand Eight Hundred Dollars (\$64,800) (\$5,400 times 12 months) in exchange for improvements to the premises consisting of both the clubhouse and the Athletic Field.

On June 14, 2006, the Board authorized the First Amendment to the Sublease (the "First Amendment") to retroactively extend the term of the Sublease from May 1, 2006 through April 30, 2007, and (i) to increase the Building 34 rent three percent (3%) to One Thousand Thirty Dollars (\$1,030) per month, and (ii) to increase rent by 3% on each anniversary date of the Commencement Date of the Sublease, and (iii) to waive rent for the portion of the Premises comprised of the Athletic Field, provided that the Subtenant agree to maintain the field and provide certain community benefits.

### **Subtenant Request**

1. On April 4, 2007, the Subtenant requested an amendment to the Sublease to increase their Building 34 premises to include in the Sublease premises the Building Encroachment area for a total of Three Thousand Seven Hundred and Twenty Eight (3,728) square feet in Building 34.
2. The Subtenant has also requested classification and adjustment of Building 34 rental rates as follows:

<b>GGYR Classification</b>	<b>Staff Classification</b>	<b>Sq. Ft.</b>	<b>Rental Rate</b>	<b>Rent</b>
Main Clubhouse	(Original Premises)	857	\$1.00	\$857
Service Area	(350 sf Encroachment)	493	\$0.20	98.60
Kitchen, Back Areas	(Encroachment)	740	\$0.20	148.00
Weight Room, Shop	(Encroachment)	1,638	<u>\$0.12</u>	<u>196.56</u>
Total		3,728		\$1,300.16

3. The Subtenant also requests to add Four Hundred (400) square feet to the Building 34 premises for additional storage area. The Subtenant proposes to improve the 400 square feet in Building 34 in exchange for rental credits of Fifteen Thousand Dollars (\$15,000) spread over the next three years.
4. The Subtenant has submitted uncertified invoices indicating that they have spent over Twenty Thousand Six Hundred Dollars (\$20,600) to develop a Netball Court on the Encroachment Land. The Subtenant requests rental credits to offset rent for the premises against those costs.

### **Athletic Field Rent and Tenant Improvement Credit**

The Subtenant did not pay monthly rent of \$5,400 for the Athletic Field from May 1, 2005 through April 30, 2006. As of April 30, 2006 accumulated unpaid rent for the Athletic Field was \$64,800.

In response to a request from the Director of Island Operations, on October 12, 2006, the Subtenant submitted a set of invoices evidencing the cost of improvements to Building 34 and the Athletic Field. The total cost of improvements made to the premises was One Hundred Seventy Nine Thousand Four Hundred and Twenty Six Dollars (\$179,426). The Director of SFGGYR certified "Under penalty of perjury of the State of California, all

submissions made to evidence monies expended for the (above) improvements are authentic and accurate to the best of my knowledge.”

Project Staff reviewed the invoices and concluded that approximately Eighty Five Thousand Dollars (\$85,000) was spent to convert the lot to an Athletic Field (\$1.50 psf). Per the terms of the sublease, Project Staff will approve a credit of \$64,800 against rent due as of April 30, 2006 for the Athletic Field in exchange for improvements made to convert the lot to an Athletic Field.

#### **Building 34 Delinquent Rent, Encroachment and Rent Assessment**

The Subtenant did not pay monthly rent of \$1,000 for the Building 34 premises from May 1, 2005 through April 30, 2006. The Subtenant did not pay monthly rent of \$1,030 for the Building 34 premises from May 1, 2006 through September 30, 2006. The Subtenant has paid monthly base rent of \$1,030 since October of 2006. As of April 30, 2007, accumulated unpaid rent for leased space in Building 34 was Seventeen Thousand One Hundred and Twenty Dollars (\$17,120).

The Subtenant occupies and has improved unleased portions of Building. Project Staff considers these actions to be an encroachment on property under the control the Authority. The encroachment in Building 34, consisting of Two Thousand Seven Hundred and Twenty Eight (2,728) square feet of space (“Building 34 Encroachment”) occurred as a part of the initial build-out of the Building 34 premises on May 1, 2005. The subtenant built locker rooms, showers and a weight room in the encroachment area.

Project Staff recommends that the Building 34 Encroachment Premises be assessed a rental rate equivalent to storage rental rates suggested by the third party appraiser Carneghi-Blum and Partners in its February 2007 assessment of rental values on Treasure Island. The monthly rent for the Building 34 Encroachment Premises would be Six Hundred and Eighty Two Dollars (\$682) or \$0.25 psf. Rent due beginning on May 1, 2005, the first day of the term of the Sublease, and continued through May 31, 2007, is Seventeen Thousand Fifty Dollars (\$17,050).

#### **Building 34 Cost of Tenant Improvements and Tenant Improvement Credits**

The Subtenant has submitted invoices evidencing One Hundred Seventy Nine Thousand Four Hundred and Twenty Six Dollars (\$179,426) in costs for improvements to the occupied space in Building 34 and the Netball Court.

Project Staff reviewed the certified invoices submitted by SFGGYR and concluded that approximately Ninety Five Thousand Dollars (\$95,000) was spent on improvements to the occupied space in Building 34. The cost per square foot to improve 3,728 square feet in Building 34 was approximately \$26 psf.

The cost to build-out the completed facility far exceeded the initial estimates of SFGGYR, in part, because the Subtenant encroached approximately 2,728 beyond the

original footprint of their Sublease premises. While the work was done on space to which the Subtenant had no rights, the work was done well and in compliance with appropriate building code requirements.

In light of the quality of improvements made to the premises, Project Staff recommends a rental credit of \$17,120 to offset unpaid Building 34 rent from May 2005 through April 2007. Additionally, Project Staff recommends a rental credit of \$17,050 to offset assessed rent for Building 34 Encroachment Premises from May 1, 2005 through May 30, 2007. Approval of the Building 34 rental credit recommendations will provide the Subtenant total rental credits of Thirty-Four Thousand One Hundred and Seventy Dollars (\$34,170) or \$9 psf in exchange for improvements to Building 34 valued at \$95,000 or \$26 psf.

#### **Vacant Land Encroachment and Rent Assessment**

The Subtenant occupies and has improved unleased portions of an adjacent parcel of land. The encroachment on adjacent land began in March of 2006 when the Subtenant built the One Thousand Three Hundred (1,300) square foot Netball Court ("Encroachment Land").

Project Staff recommends that the Encroachment Land Premises be assessed a rental rate equivalent to the third party appraiser's opinion of market rate for vacant land rate or \$0.05 psf. The monthly rent for the Netball Court would be Sixty Five Dollars (\$65) beginning March 1, 2006. Rent through May 31, 2007 would be Nine Hundred Seventy Five Dollars (\$975).

#### **Vacant Land Cost of Tenant Improvements and Tenant Improvement Credits**

The Subtenant has submitted **uncertified** invoices evidencing approximately Twenty Thousand Six Hundred Dollars (\$20,600) or \$16 psf in costs for improvements to the Netball Court.

Project Staff recommends a rental credit of \$975 to offset the cost to occupy the Netball Court area from March 1, 2006 through May 31, 2007, subject to delivery of satisfactory proof that costs claimed are a true and correct record of costs incurred for development of the Netball Court and Project Staff certifies the improvements are satisfactory.

#### **Penalties**

Penalties are described at **Section 4.3 Late Charge**, of the Sublease. Project Staff recommends assessment of late penalties in the amount of One Thousand Twenty Nine Dollars (\$1,029) for unpaid rent from May 1, 2005 through September 30, 2006 for the Original Building 34 premises. Project Staff does not recommend that Penalties be reduced by Tenant Improvement Credits.

#### **Caretaker**

The Subtenant has a caretaker for the premises. In addition to providing light maintenance services to the premises, the caretaker remains on the premises twenty-four hours a day to provide security. The caretaker has provided benefits to the community by alerting police and project staff to security issues affecting the rugby club and the surrounding area. The Subtenant has requested acknowledgement of the presence of the caretaker and permission to allow the caretaker to remain overnight on the premises on an occasional basis. Project Staff recommends granting approval of the request.

### **Alcohol**

Club members and their guests are provided food and beverage service along with alcoholic beverages at club functions. There are no retail sales of alcoholic beverages and alcoholic beverages are not made available to the general public. SFGGYR requests permission to provide alcoholic beverages to members and guests of club functions. Project Staff recommends granting approval of the request.

### **Waiver of Base Rent for Athletic Field and Netball Court**

The outdoor playing areas are an amenity to the Island community and are used by the community for recreational purposes. The Subtenant has complied with the direction of the Authority maintain the field at no cost to the Sublandlord and provide to the community no-cost rugby training, outreach and access to rugby matches. Therefore, Project Staff recommends that the Authority waive the monthly rent for the portion of the Premises comprised of the Athletic Field for the duration of the Sublease and subsequent amendments to extend or renew the term of the Sublease. Additionally, the Subtenant maintains the Netball Court at no cost to the Authority and provides to the community no-cost netball training, outreach and access to netball matches. Therefore, Project Staff recommends that the Authority waive the monthly rent for the portion of the Premises comprised of the Netball Court for the duration of the Sublease and subsequent amendments to extend or renew the term of the Sublease, provided that the Subtenant agree to continue to provide the community the benefits of netball training and access to the court.

### **SUBTENANT STANDING:**

Subtenant is current in rent for the month of May 2007. However, the Subtenant is in arrears in Base Rent for the original Building 34 premises and assessments for Building Encroachment Premises and Encroachment Land Premises. The Subtenant is compliant with the requirements of the Sublease with respect to proof of insurance.

### **RECOMMENDATION:**

The San Francisco Golden Gate Youth Rugby Club has been a good citizen on the Island. They have brought life to a formerly unused part of the Island. They have held regular rugby clinics for Island youth. They have worked with the gymnasium to train youth and

adults in rugby. They routinely invite and encourage Island residents to attend rugby matches and are looking for more ways to improve life on the Island. They have responded to recent ideas proposed by residents to make improvements to Island recreational facilities, and they have offered the services of members to provide light excavation and landscape improvement services. They have helped the Netball Association establish a presence on Treasure Island. Their ongoing contribution to Island youth and life make them a valuable asset and a vital part of the success of the community.

Project Staff recommends approval of (i) the extension of the Sublease with San Francisco Golden Gate Youth Rugby on a month-to-month basis through November 30, 2007; (ii) increase the premises in Building 34 to 3,728 square feet to include the Building 34 Encroachment; (iii) increase monthly rent for Building 34 to \$1,712; (iv) approve tenant improvement credits in the amount of \$34,170 for improvements made to Building 34; (v) increase the vacant land premises by 1,300 square feet to include the Encroachment Land for use as a Netball Court; (vi) provide a tenant improvement credit up to a maximum of \$975 for development of the Netball Court, subject to receipt of satisfactory proof by Project Staff that costs claimed are a true and correct record of costs incurred for development of the Netball Court; (vii) approve a waiver of monthly rent of \$65 for the Netball Court in exchange for community outreach efforts; (viii) acknowledgement of the presence of a caretaker and security presence on a twenty-four hour basis; (ix) allow the Subtenant to serve alcoholic beverages to members and guests, subject to the condition that alcohol beverage service is permitted on the premises under license for the California Alcoholic Beverage Commission; (x) that in exchange for recreational contributions to the community, base rent for the Athletic Field and the Netball Court be waived for the duration of the Sublease and subsequent amendments to extend or renew the term of the Sublease, provided that the Subtenant agrees to continue to provide the community the benefits of Rugby and Netball training and access to the Athletic Field and the Netball Court. Approval of Project Staff recommendations to provide the Subtenant a total of \$35,145 in Tenant Improvement Credits in exchange for Tenant Improvements with a value of \$179,426 will satisfy all of the Subtenant's outstanding obligations to the Authority.

#### **EXHIBITS:**

EXHIBIT A – Second Amendment to the Sublease between the Treasure Island Development Authority and San Francisco Golden Gate Youth Rugby.

EXHIBIT B – San Francisco Golden Gate Rugby Request

Prepared by Marc McDonald, Facilities Manager  
For Mirian Saez, Director of Island Operations

[Amendment to Sublease with San Francisco Golden Gate Youth Rugby]

RESOLUTION AUTHORIZING THE SECOND AMENDMENT TO THE SUBLEASE BETWEEN THE TREASURE ISLAND DEVELOPMENT AUTHORITY AND SAN FRANCISCO GOLDEN GATE YOUTH RUGBY, TO INCREASE THE PREMISES, PROVIDE RENTAL CREDITS AND EXTEND THE TERM ON A MONTH-TO-MONTH BASIS THROUGH NOVEMBER 30, 2007.

WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997 (the "Act"), which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968, the California legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and,

WHEREAS, On April 13, 2005, the San Francisco Golden Gate Youth Rugby Club (the "Subtenant") entered into a Sublease with the Authority for One Thousand (1,000) square feet in Building 34 at a rental fee of One Thousand Dollars (\$1,000) per month, plus Fifty Four Thousand (54,000) square feet of unimproved land at a rental fee of Five Thousand Four Hundred Dollars (\$5,400) per month, plus a rental credit in the amount of Sixty Four

1 Thousand Eight Hundred Dollars (\$64,800) in exchange for improvements to the Premises  
2 consisting of both the unimproved land and Building 34; and,

3 WHEREAS, On May 10, 2006, the Authority approved the First Amendment to  
4 extend the term of the Sublease through April 30, 2007, to increase the rent to One  
5 Thousand and Thirty Dollars per month for the premises in Building 34, and to waive  
6 monthly rent of \$5,400 for the rugby field beginning May 1, 2006; and,

7 WHEREAS, The Subtenant has submitted invoices and receipts for materials and  
8 labor with a total value of approximately One Hundred and Eighty Thousand Dollars  
9 (\$180,000) demonstrating work performed on behalf of the Subtenant to make  
10 improvements to Building 34 and vacant land occupied by the Subtenant and the  
11 Subtenant has certified the receipts and invoices submitted as being authentic and  
12 accurate evidence of monies spent on improvements to Building 34 and vacant land  
13 occupied by the Subtenant; and,

14 WHEREAS, Project staff has reviewed the receipts and invoices submitted and  
15 concluded that the total value evidenced by such receipts and invoices total over One  
16 Hundred and Eighty Thousand Dollars (\$180,000); and,

17 WHEREAS, The Subtenant did not pay rent for the 1,000 square feet of premises in  
18 Building 34 subleased to Subtenant from May 1, 2005 through September 30, 2006 resulting  
19 in an outstanding delinquency in the amount of \$17,120, plus penalties of One Thousand  
20 Twenty Nine Dollars (\$1,029); and,

21 WHEREAS, Subtenant has requested a rental credit for improvements made to  
22 Building 34 to be used to eliminate its obligation to pay delinquent rent for the 1,000 square  
23 feet in Building 34 that was subleased to Subtenant; and,

24 WHEREAS, The Subtenant wishes to acknowledge that without permission of  
25 Project Staff, Subtenant encroached upon, took possession of and improved an additional  
Two Thousand Seven Hundred and Twenty Eight Square Feet (2,728) in Building 34 on

1 May 1, 2005 and the Subtenant wishes to amend the Sublease to include such additional  
2 2,728 square feet in the Building 34 premises for use as lockers, showers and athletic  
3 support facilities; and,

4 WHEREAS, Project staff has negotiated a monthly rental fee of Six Hundred and  
5 Eighty Two Dollars (\$682) for the additional 2,728 square feet in Building 34, resulting in a  
6 monthly rental fee of One Thousand Seven Hundred and Twelve Dollars (\$1,712) for the  
7 use of Building 34; and,

8 WHEREAS, The total rent due for the additional 2,728 square foot encroachment  
9 area in Building 34 for the period from May 1, 2005 through May 31, 2007 is Seventeen  
10 Thousand and Fifty Dollars (\$17,050); and,

11 WHEREAS, Subtenant has requested a rental credit for improvements made to  
12 Building 34 to be used to eliminate its obligation to pay delinquent rent for the 2,728 square  
13 feet that Subtenant encroached upon in Building 34; and,

14 WHEREAS, Subtenant wishes to acknowledge that without permission of Project Staff,  
15 Subtenant encroached upon, took possession of and improved an additional One  
16 Thousand Three Hundred (1,300) square feet of unimproved land on March 1, 2006, and  
17 the Subtenant wishes to amend the Sublease to include in the premises an additional 1,300  
18 square feet of land south of Building 34 for use as a netball court and other athletic  
19 purposes at a monthly rental fee of \$130; and,

20 WHEREAS, Subtenant has requested waiver of the monthly rental fee for the 1,300  
21 square foot area South of Building 34 that is used as a netball court and for other athletic  
22 activities and extension of the waiver of the monthly rental fee for the Rugby Field in  
23 exchange for community contributions consisting of providing the community access to the  
24 netball court and the Rugby Field for training island residents and youth in the sport of  
25 netball and rugby; and,

1 WHEREAS, Subtenant has and continues to make significant contributions to the  
2 Treasure Island community and improvements to life on Treasure Island by providing rugby  
3 clinics to island youth at no cost and invitations to island residents to watch world class  
4 rugby matches at no cost; Now, Therefore Be It

5 RESOLVED, That the Authority hereby approves and authorizes the Director of  
6 Island Operations to extend the term of the Sublease with San Francisco Golden Gate  
7 Youth Rugby through November 30, 2007, provided that nothing herein shall limit the  
8 Authority's ability to terminate the Sublease on thirty days notice as provided in the  
9 Sublease; and, Be It

10 FURTHER RESOLVED, That the Authority hereby approves and authorizes the Director  
11 of Island Operations to increase the premises in Building 34 by 2,728 square feet, effective  
12 May 1, 2005 and that monthly base rent for the additional premises be set at \$682; and,  
13 Be It

14 FURTHER RESOLVED, That the Authority hereby approves and authorizes the Director  
15 of Island Operations to establish the monthly rent for the total 3,728 square feet used by  
16 Subtenant in Building 34 at \$1,712; and, Be It

17 FURTHER RESOLVED, That the Authority hereby approves and authorizes the  
18 Director of Island Operations to increase the vacant unimproved land premises by 1,300  
19 square feet effective March 1, 2006 at a monthly base rental fee of \$130; and Be It

20 FURTHER RESOLVED, That the Authority hereby approves and authorizes the  
21 Director of Island Operations to provide the Subtenant rental credits in the aggregate  
22 amount of \$\_\_\_\_\_ to offset outstanding delinquencies for unpaid rent (but not late  
23 penalties) for premises subleased to the Subtenant and for premises encroached upon by  
24 Subtenant through May 31, 2007 **[confirm date – one place in the staff report uses an**  
25 **April 2007 date]**; and Be It

1 FURTHER RESOLVED, That the Authority hereby approves and authorizes the  
2 Director of Island Operations to amend the Sublease to allow the tenant access to the  
3 premises twenty-four hours a day and acknowledges that the Subtenant's caretaker  
4 may remain on the premises to provide security twenty-four hours a day, but not for  
5 residential purposes; and, Be It

6 FURTHER RESOLVED, That the Authority hereby approves and authorizes the  
7 Director of Island Operations to waive the obligation of Subtenant to pay rent for the  
8 54,000 square feet of land that has been improved with the Rugby Field and the 1,300  
9 square feet of land that has been improved with the Net Ball court through the  
10 expiration date of the Sublease; and, Be It

11 FURTHER RESOLVED, That the Authority hereby approves and authorizes the  
12 Director of Island Operations to amend the Sublease to allow the Subtenant to serve  
13 food and beverages, including alcoholic beverages, to members and guests, subject  
14 to the condition that alcohol beverage service is permitted on the premises under  
15 license from the California Department of Alcoholic Beverage Control and under the  
16 terms of the master lease with the Navy; and, Be It

17 FURTHER RESOLVED, That the Authority hereby authorizes the Director of Island  
18 Operations to execute a Second Amendment to the Sublease incorporating the terms  
19 described above in substantially the form attached as Exhibit A; and, Be It

20 FURTHER RESOLVED, That the Authority hereby finds that the Second Amendment  
21 to Sublease (1) will serve the goals of the Authority and is in the public interest of the City, and  
22 (2) the terms and conditions of the Second Amendment to Sublease are economically  
23 reasonable in light of the value of the improvements that Subtenant has made to the Premises  
24 and Subtenant's significant contributions to the Authority and the Treasure Island community.

**CERTIFICATE OF SECRETARY**

I hereby certify that I am the duly elected Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors at a properly noticed meeting on June 13, 2007.

---

John Elberling, Secretary





**SECOND AMENDMENT TO SUBLEASE**

**between**

**THE TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

**and**

**SAN FRANCISCO GOLDEN GATE YOUTH RUGBY CLUB**

**as Subtenant**

**For the Sublease of**

**Building 34 and land  
Naval Station Treasure Island**

**San Francisco, California**

**June , 2007**

**SECOND AMENDMENT TO  
TREASURE ISLAND SUBLEASE**

THIS SECOND AMENDMENT TO SUBLEASE (the "Second Amendment"), dated as of the \_\_\_\_ day of June, 2007, is by and between the Treasure Island Development Authority ("Sublandlord") and the San Francisco Golden Gate Youth Rugby Club ("Subtenant"), a non-profit public benefit corporation. From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Second Amendment is made with reference to the following facts and circumstances:

- A. On April 13, 2005, the Parties entered into that certain Sublease (the "Original Sublease") whereby Sublandlord subleased to Subtenant approximately 1,000 square feet in Building 34 of the Property and a 54,000 square foot parcel of land bounded by Avenue H, 3<sup>rd</sup> Street, Avenue I and California Avenue as an athletic field for a term expiring on May 1, 2006. Capitalized terms that are not defined in this Second Amendment shall have the meanings set forth in the Sublease.
- B. On June 14, 2006, Sublandlord's Board of Directors authorized the First Amendment to the Sublease (the "First Amendment") to extend the term of the Original Sublease through April 30, 2007, to increase the Building 34 rent and to waive rent for the portion of the Premises comprised of the Athletic Field with certain conditions. The Original Sublease and the First Amendment are collectively referred to herein as the "Sublease".
- C. Subtenant and Sublandlord desire to amend the Sublease to increase the Premises, increase the rental credit, and retroactively extend the term of the Sublease on a month-to-month basis through November 30, 2007, on the terms and conditions set forth in this Second Amendment.
- D. On June 13, 2007, the Authority's Board of Directors authorized the Director of Island Operations to enter into this Second Amendment.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

- A. Paragraph 1.1 of the Sublease currently reads as follows:

**1.1 "Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises of an approximately 1,000 square foot portion of Building 34, including the improvements thereon and a parcel of land totaling approximately 54,000 square feet bounded by Avenue H, 3<sup>rd</sup> Street, Avenue I and California Avenue, hereinafter referred to as ("Athletic Field")."

Paragraph 1.1 of the Sublease is hereby amended to read as follows:

**1.1 "Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises consisting of (i) an approximately 3,728 square foot portion of Building 34, comprised of approximately 1,000 square feet of meeting and assembly space (the "Clubhouse"), plus approximately 2,728 square feet of locker rooms, showers, storage and support spaces (the "Locker Room Area"); (ii) a parcel of land totaling approximately 54,000 square feet bounded by Avenue H, 3<sup>rd</sup> Street, Avenue I and California Avenue ("Athletic Field"); and (iii) an additional approximately 1,300 square feet of land south of Building 34 (the "Netball Area"). The Locker Room Area and the Netball Area were not included in the Premises subleased to Subtenant under the Original Sublease. Subtenant encroached upon and improved the Locker Room Area and the Netball Area without Sublandlord's permission. Under the terms of the Second Amendment, the Locker Room Area is deemed to be included within the Premises effective May 1, 2005, and the Netball Area is deemed to be included in the Premises effective March 1, 2006.

B. Paragraph 3.1 of the Sublease currently reads as follows:

3.1 **"Term of Sublease.** The term of this Sublease shall commence on May 1, 2006 (the "Commencement Date") and continue on a month to month basis not to exceed April 31, 2007, (the "Expiration Date"), unless sooner terminated or extended pursuant to the terms of the Sublease. Either Party may, in its sole discretion, terminate this Sublease by giving thirty (30) days prior written notice to the other Party. Subtenant hereby acknowledges that the underlying Master Lease with the Navy currently is scheduled to terminate on December 1, 2006, and that Sublandlord anticipates but cannot guarantee that the Navy will extend the term of such Master Lease beyond the date of December 1, 2006. In the event that the Navy refuses to extend the term of the Master Lease, Subtenant agrees that this Sublease shall terminate upon the termination of the Master Lease.

Paragraph 3.1 of the Sublease is hereby amended to read as follows:

3.1 **"Term of Sublease.** The term of this Sublease shall commence on May 1, 2005 (the "Commencement Date") and continue on a month to month basis not to exceed November 30, 2007 (the "Expiration Date"), unless sooner terminated or extended pursuant to the terms of this Sublease. Either Party may, in its sole discretion, terminate this Sublease by giving not less than thirty (30) days prior written notice to the other Party.

C. Sentence One of Paragraph 4.1 of the Sublease currently reads as follows:

"Beginning on May 1, 2006, Subtenant shall pay to Sublandlord One Thousand and Thirty Dollars and no cents (\$1,030.00) (the "Base Rent") per month for premises in Building 34."

Sentence One of Paragraph 4.1 of the Sublease is hereby amended to read as follows:

"Subtenant shall pay to Sublandlord base monthly rent (collectively, "Base Rent") as follows:

Clubhouse:

May 1, 2005 through April 30, 2006: \$1,000 per month

May 1, 2006 through November 30, 2007: \$1,030 per month

Locker Room Area:

May 1, 2005 through November 30, 2007: \$682 per month

Athletic Field:

May 1, 2005 through April 30, 2006: \$5,400

May 1, 2006 through November 30, 2007: waived, subject to the terms of Paragraph 4.1 below

Netball Area:

March 1, 2006 through April 30, 2007: \$65 per month

May 1, 2007 through November 30, 2007: waived, subject to the terms of Paragraph 4.1 below

D. Sentence Six of Paragraph 4.1 of the Sublease currently reads as follows:

"There shall be no rent for the portion of the Premises comprised of the Athletic Field provided that Subtenant maintains at no cost to Sublandlord such Athletic Field in the condition it exists on the date of this Amendment and provides no-cost rugby training and outreach to community youth and no-cost community access to competitive rugby matches held at the Athletic Field, all in accordance with and as described in a schedule of community outreach that Subtenant shall submit to Sublandlord within 60 days of this First Amendment."

Sentence Six of Paragraph 4.1 of the Sublease is hereby amended to read as follows:

"Commencing May 1, 2006, there shall be no Base Rent for the portion of the Premises comprised of the Athletic Field and provided that Subtenant maintains at no cost to Sublandlord such Athletic Field in the condition it exists on the date of the First Amendment and the Subtenant provides no-cost rugby training and outreach to community youth and no-cost community access to competitive rugby matches held at the Athletic Field, all in accordance with and described in a

schedule of community outreach that Subtenant shall submit to Sublandlord on at least a quarterly basis. Commencing May 1, 2007, there shall be no Base Rent for the portion of the Premises comprised of the Netball Area provided that Subtenant maintains at no cost to Sublandlord such Netball Area in the condition it exists on the date of the Second Amendment and the Subtenant provides no-cost netball training and outreach to community youth and no-cost community access to competitive netball matches held at the Netball Area, all in accordance with and described in a schedule of community outreach that Subtenant shall submit to Sublandlord on at least a quarterly basis."

E. Sentence Seven of Paragraph 4.4 of the Sublease currently reads as follows:

**4.4. Rent Credits.** "Subtenant will receive a credit against the rent for the Premises in an amount up to and no greater than \$64,800."

Sentence Seven of Paragraph 4.4 of the Sublease is hereby amended to read as follows:

**4.4 Rent Credits.** "Subtenant will receive a credit against the Base Rent for the Premises in an amount up to and no greater than \$64,800 as a rental credit against Base Rent payable for the Athletic Field from May 1, 2005 through April 30, 2006, plus an additional credit in the amount of Thirty Four Thousand One Hundred and Seventy Dollars (\$34,170) against Base Rent for the portion of the Premises consisting of approximately 3,728 square feet of Building 34, containing the Clubhouse and the Locker Room Area. Such credits shall be available exclusively to reduce delinquent Base Rent for the Premises, up to a maximum of \$34,170. Subtenant shall receive an additional credit against delinquent Base Rent for the Netball Area up to and no more than Nine Hundred and Seventy Five Dollars (\$975). Such Netball Area credit shall be available only after delivery of satisfactory proof of the true and actual costs for development of the Netball Area and shall be available exclusively to reduce delinquent Base Rent for the Netball Area, up to a maximum of \$975. All rental credits shall be available only for Premises occupied by Subtenant on May 1, 2007. Subtenant acknowledges an obligation to pay Late Charges in the amount due on May 1, 2007 of \$1,029. Rent Credits shall not be available to offset or otherwise reduce other amounts that are or might be due and owing for any other charges or obligations and duties of the Subtenant, including amounts due for Additional Charges and Late Charges".

F. Paragraph 6.1 of the Sublease is as follows:

**6.1 "Subtenant's Permitted Use.** A portion of Building 34 will be used for meeting space, lockers and showers for the rugby team. The Athletic Field will be used for athletic activities."

Paragraph 6.1 of the Sublease is hereby amended to read as follows:

**6.1 "Subtenant's Permitted Use.** Subtenant may use the Premises in Building 34 as a meeting space, clubhouse, lockers and showers and support facilities for rugby and netball. Subtenant may conduct food and beverage service on the Premises in Building 34 in support of their meetings and activities, provided such service is in accordance with all applicable laws and the provisions of this Sublease and the Master Lease, and further provided that any service of alcoholic beverages to Subtenant's members and guests at club functions is subject to the additional requirements that Subtenant obtain the appropriate license from the California Department of Alcoholic Beverage Control, that no alcoholic beverages are served to the general public and there are no retail sales of alcoholic beverages. Subtenant shall not sublease or otherwise rent out the Premises to third parties for meetings or other activities without the prior written approval of Sublandlord, which approval Sublandlord may grant or withhold at Sublandlord's sole and absolute discretion. No sale of tobacco or tobacco related products shall be permitted. Subtenant may conduct food and beverage service, including alcohol beverage service as permitted under license from the California Alcoholic Beverage Commission on the Premises in support of their meetings and activities as a clubhouse. The Athletic Field and the Netball Area may be used for athletic activities. Subtenant may not use the Premises, or any portion thereof, for any other purposes.

G. Paragraph 6.2 of the Sublease currently reads as follows:

**6.2 "Subtenant's Access to the Premises.** As provided in Section 30 of the Master Lease, Subtenant will have access to the Premises on normal business hours, Monday through Friday from 8:30 AM to 10:00 PM.

Paragraph 6.2 of the Sublease is hereby amended to read as follows:

**6.2 "Subtenant's Access to the Premises.** As provided in Section 30 of the Master Lease, Subtenant shall have access to the Premises (i) on a 24-hours per day, seven days a week basis for security purposes only, and (ii) for all other purposes, from 8 a.m. to 9 p.m. seven days a week; provided, however, Subtenant shall coordinate such access with the local representative of Master Landlord. No residential use shall be allowed."

H. Except as expressly amended in this Second Amendment, all other terms and conditions of the Sublease shall remain in full force and effect.

Sublandlord and Subtenant have executed this Second Amendment in triplicate as of the date first written above.

**SUBTENANT:**

**San Francisco Golden Gate Youth Rugby Club**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**SUBLANDLORD:**

**Treasure Island Development Authority**

By: \_\_\_\_\_

Mirian Saez

Its: Director of Island Operations

Approved as to Form:

DENNIS J. HERRERA,

City Attorney

By \_\_\_\_\_

**Deputy City Attorney**









April 4, 2007

Marc Macdonald  
Operations Director  
Treasure Island Development Authority  
410 Avenue of Palms  
Treasure Island  
San Francisco, CA 94130

Re: Lease renewal  
specific square footage  
Measurements and Rents

Dear Marc:

Before I get into the business aspect of our relationship, on behalf of the San Francisco Golden Gate Rugby Club, our SFGG Youth Club and Development Program, the San Francisco Stars Women's Netball Club and last but certainly not least myself as a Director of the Organization, a warm and hearty thank-you and congratulations to you, Miriam, Mary Anne, Lori, Pete and your entire organization.

The thank you is obvious and could not be more heart felt.

The congratulations is due for taking the City and County of San Francisco into new and uncharted territory and successfully creating a true private non-profit organization and City Government "Partnership" in the recreation field. As you may know, I have been a member for nearly the last ten years on both the old and new Open-Space Committee for the SF Recreation and Park Department. While a few earnest attempts were made, SFRPD never was able to create what all of you have done at Treasure Island.

By looking ahead, understanding community needs and taking the bold steps to allow a private-not-for profit organization (volunteers) to vastly improve and then utilize what would otherwise be fallow land and rotting unused buildings is not as obvious as it seems. The evidence for this is how little of it has been done by the City and County, especially with smaller community groups. I could go on but for now let us just say again THANKS and CONGRATULATIONS!

Now onto the formal business of Lease Renewal and Modifications:

Attached (A-1) to this letter is the requested drawing of Building 180 with the original space noted. A second attachment (A-2) is an enlarged drawing of the space occupied and/or used by SFGG. The total area of the space used by SFGG and affiliates is approximately 4328

Golden Gate Rugby Club  
395 West Portal Avenue  
San Francisco, CA 94127  
415-759-1900

square feet with most of that being storage and unfinished areas.

The Main Club Room (our pride and joy) is a gross total of approximately 1350 square feet. This consists of the actual hall of 857 square feet and then the ancillary rooms including the Ladies Restroom, Bar and front entrance "office" area equaling approximately 493 square feet. Details for each area occupied are attached (A-3).

The only true quality "retail" type or prime space is the 857 square foot hall. We would suggest a rental rate of \$1.00 per square foot per month for this area. For the service area (493 square feet) we are suggesting a value of \$.20 per square foot per month. This same rental rate of \$.20 would apply to the approximately 740 square foot adjacent bar area consisting of the Kitchen, Referee Room, Storage Area (old freezer), Locker Rooms, Shower and Mens, Restroom.

The other areas consisting of semi-finished or unfinished storage area are what we specifically describe as the Weight Room, Equipment Room, Junk Storage Area and Shop. These areas total 1638 square feet. Our suggested rent for these areas is \$.12 per square foot per month. This would bring the total monthly rent to \$1300.16.

Further, we propose to expand into the area of approximately 400 square feet next to the main hall. We are hoping to have at least (3) three years of rent credit for the improvements we will make in this area. We will expend well over \$15,000 in labor and materials to improve this space and will provide invoices to you upon completion.

The next item that needs approval is to receive a rental credit similar to the field for the netball court that we installed. The netball court sits on approximately 1300 square feet of what was a weed infested out-door area. The netball court cost was a minimum of \$20,602.68 which does not include much of the labor used to install it. The back-up invoices for this are attached as a packet and labeled A-4.

Finally, it is important to remember that this entire facility is truly a special use area. The 1.00 rental rate for the main hall area is a realistic market rate. The other rates are for areas that are specific recreational uses and could not be justified by applying a "commercial" rental rate to them. SFGG is very grateful to your staff and TIDA as noted above, and if we ever become "profitable" we would be happy to share. Currently we are running seriously in the red and survive on the generosity of our members and friends.

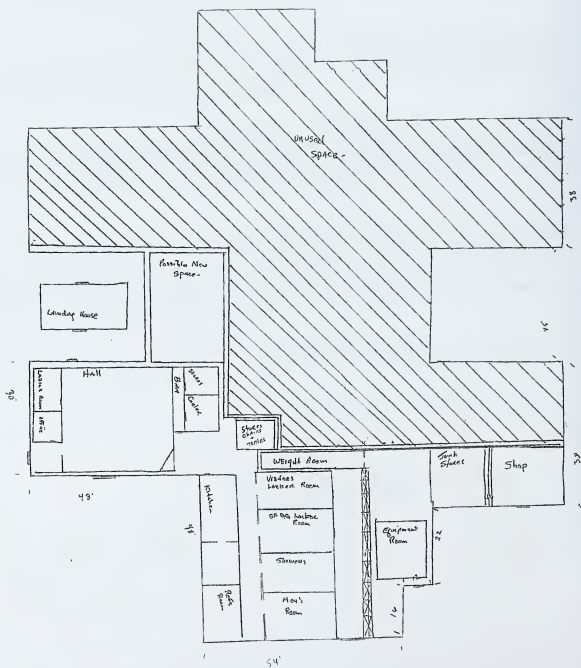
Accordingly we hope that you will approve the above modifications and credits. Your continued support is greatly appreciated and we intend to become an even stronger member of the Treasure Island Community over the coming years.

Respectfully submitted,

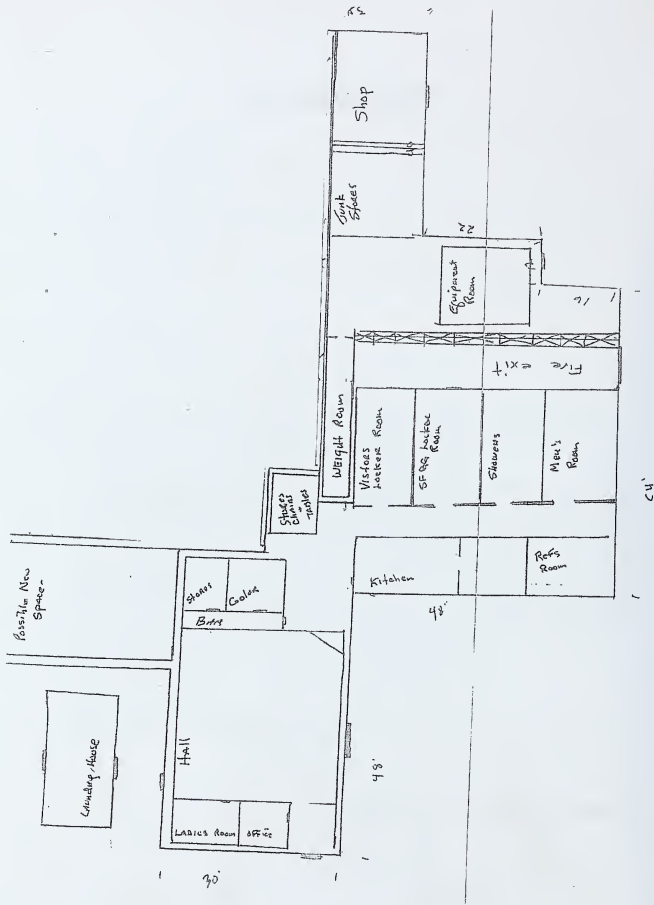
  
\_\_\_\_\_  
Gregory J. Rocca, Director  
SFGG Rugby Club

## Attachment A-1

SS GG Rugby Club House



## Attachment A-2



## Attachment A-3

	Dimensions*	Sq. Ft.	Price
Main Room (gross)	30' x 45'	1350**	N/A
Hall		857	1.00
Office	10' x 12'	120	.20
Ladies Room	11' x 11'	121	.20
Bar Area	18' x 14'	252	.20
Kitchen and Refs. Room	8' x 30'	240	.20
Stores, Chairs and Tables	10' x 10'	100	.20
Locker Room, Showers and Men's Room	20' x 20'	400	.20
Weight Room	15' x 30'	450	.12
Equipment Room	12' x 15'	180	.12
Junk Storage	24' x 24'	576	.12
Shop	18' x 24'	432	.12

\* please note this was not professionally measured. Some odd-shaped areas were estimated but the overall measurements are very close to exact.

\*\* 1350 is the gross area of the Main Room, including the Hall, Ladies Room, and the Bar Area (including cooler, etc.)





**AGENDA ITEM 13**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of June 13, 2007**

**Subject:** Informational Presentation on Draft Volunteer Policy

**Contact** Mirian Saez, Director of Island Operations  
**Phone** (415) 274-0660

**BACKGROUND**

At its April 11, 2007 meeting, the Treasure Island Development Authority (TIDA) Board requested formalization of the process by which organizations can provide services on Treasure Island and Yerba Buena Island.

In the previous year, TIDA Project Staff has received an increase in queries from local organizations wishing to volunteer on the Islands. The volunteerism requests can be categorized in to following areas: habitat and native plant restoration, neighborhood beautification and property restoration, recreational and educational programs, and preservation of historic sites and artifacts.

TIDA Project Staff consulted with numerous, local, state and federal agencies for information on developing a Volunteer Policy. The goal of the Volunteer Policy is to create a simplified and transparent process for all organizations wishing to volunteer on the Islands, as well as to limit TIDA's potential exposure or liability in accordance with the Navy's mandated stipulations in the Master Lease.

**RECOMMENDATION**

Project staff requests feedback on the attached proposed Treasure Island Development Authority Volunteer Policy.

**EXHIBITS**

Exhibit A Draft Volunteer Policy

Prepared by: Marianne Mazzucco Thompson, Public Information Officer  
For: Mirian Saez, Director of Island Operations





RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT





**TREASURE ISLAND DEVELOPMENT AUTHORITY**

410 AVENUE OF THE PALMS  
Bldg ONE, 2<sup>ND</sup> FLOOR TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660 FAX (415) 274-0299  
WWW.SFGOV.ORG/TREASUREISLAND

**Treasure Island Development Authority  
Volunteer Policy  
July 1, 2007**

The Treasure Island Development Authority (TIDA) recognizes the value of Yerba Buena and Treasure Islands' natural and historic resources and welcomes volunteer activity on the Islands. TIDA acknowledges that volunteers and volunteer organizations contribute greatly toward improving the safety, aesthetics, and natural values of the Islands' resources.

The Treasure Island Development Authority and the Project Staff are grateful for the work of volunteers and are committed to making the process of volunteering on Treasure Island clear and simple, as well as safe and rewarding. That is why TIDA has developed these simple procedures to guide volunteer work on the Islands.

Volunteer opportunities on Yerba Buena Island and Treasure Island fall into four categories.

- 1) Habitat and native plant restoration which further and promote the sustainable objectives of the TIDA Redevelopment Plan;
- 2) Neighborhood beautification and property restoration on Treasure Island and Yerba Buena Island which improves the quality of life for Island residents;
- 3) Recreational and educational programs for youth; and
- 4) Historic sites and artifacts restoration.

**Volunteer Approval Process**

All volunteers and organizations must contact the TIDA Special Events Office in order to complete a Facility Use Application and reserve a date and location, as well as to ensure that the volunteer event is not in conflict with a previously reserved event. Copy attached as Exhibit A

- Reservations shall be made no later than thirty (30) days prior to the event.

- Reservations are not confirmed until a Facility Use Application has been processed and approved by the TIDA Project Office.
- Upon approval of the Facility Use Application, TIDA will issue a Use Permit to the Permittee. Copy attached as Exhibit B.
- All volunteer events must have General Liability Insurance coverage meeting the requirements set forth in the Use Permit. General Liability Insurance coverage may be obtained by the Permittee or purchased through the TIDA Project Office.
- All volunteers must sign and complete a Waiver and Release Form. Copy attached as Exhibit C.
- It is the responsibility of the Permittee to obtain the signed Waiver and Release Form from all volunteers, prior to the start of the volunteer event.
- By signing the Waiver and Release Form the volunteer waives all rights against the Treasure Island Parties and releases parties from any and all losses arising out of or in any way relating to the volunteer work assignment.
- All completed Waiver and Release Form(s) must be submitted by the Permittee to the TIDA Events Office where it will be kept on file with the Facilities Use Application.

### **General Information**

TIDA requires that volunteer groups provide any necessary supplies, materials and resources for volunteer work. These items include but are not limited to: waste removal bags, gloves, shovels, tools, and protective gear.

Removal of debris and garbage bags must be coordinated with the TIDA Special Events Office.

Large scale events require coordination with the TIDA Special Events Office for port-a-potties, security, and traffic control.

### **Contact Information**

Please contact the TIDA Special Events Office at 415-274-0312 or view TIDA's website [www.sfgov.org/treasureisland](http://www.sfgov.org/treasureisland) to obtain and apply for a Use Permit.

Exhibit A: Facilities Use Application  
 Exhibit B: Use Permit  
 Exhibit C: Waiver and Release Form

*TREASURE ISLAND DEVELOPMENT AUTHORITY*  
*FACILITY USE APPLICATION*

APPLICANT INFORMATION (please type or print clearly)

NAME/COMPANY: \_\_\_\_\_

PRIMARY CONTACT: \_\_\_\_\_

DAYTIME PHONE: \_\_\_\_\_ ALTERNATE PHONE: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_ EMAIL ADDRESS: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

NAME OF LEGAL PERMITTEE (LEGAL CONTRACTING PARTY): \_\_\_\_\_

VENUE and DATE REQUESTED

VENUE	DATE	TIME IN	TIME OUT
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

PLEASE BE SURE TO INCLUDE ANY AND ALL REQUESTED TIMES FOR SET-UP, DECORATION, AND BREAK-DOWN OF THE FACILITY. THESE TIMES WILL BE THE ONLY TIMES PERMITTEE AND/OR ANY VENDORS WILL BE ALLOWED ACCESS TO THE FACILITY.

EVENT DESCRIPTION

Private Event (attendance by invitation only) ☐

Public Event ☐

Social Event ☐

Sporting Event ☐

Business Meeting ☐

Other ☐

Please describe event: \_\_\_\_\_

Alcoholic Beverages SERVED ☐

Food SERVED ☐

Alcoholic Beverages SOLD ☐

Food SOLD ☐

Merchandise SOLD ☐

Amplified Sound ☐

Paid Admission ☐

Tent(s) ☐

*TREASURE ISLAND DEVELOPMENT AUTHORITY  
FACILITY USE APPLICATION*

ATTENDANCE

Maximum Attendance: \_\_\_\_\_

Maximum Vehicles: \_\_\_\_\_

WEDDING & DOMESTIC PARTNER CEREMONY INFORMATION

Ceremony Only ☐

Reception Only ☐

Ceremony & Reception ☐

Bride's Name \_\_\_\_\_

Phone \_\_\_\_\_

Groom's Name \_\_\_\_\_

Phone \_\_\_\_\_

Domestic Partner's Name \_\_\_\_\_

Phone \_\_\_\_\_

Domestic Partner's Name \_\_\_\_\_

Phone \_\_\_\_\_

This form is for preliminary information to request use of facilities on Treasure Island. THIS FORM IS NOT A COMMITMENT BY THE TREASURE ISLAND DEVELOPMENT AUTHORITY FOR USE OR A CONTRACT BY THE TREASURE ISLAND DEVELOPMENT AUTHORITY FOR PERMISSION OF SUCH USE.

**ACKNOWLEDGMENT:**

I, \_\_\_\_\_, (Name of Applicant or Authorized Representative) HEREBY ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD THE FOREGOING TREASURE ISLAND DEVELOPMENT AUTHORITY SPECIAL EVENT POLICIES AND PROCEDURES AND THAT SUCH POLICIES AND PROCEDURES APPLY TO THIS APPLICATION FOR THE USE OF FACILITIES ON TREASURE ISLAND.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

Name of Applicant or Authorized Representative

Please return the original signed application to:

Treasure Island Development Authority

Attn: Lori Mazzola

410 Avenue of Palms, Treasure Island

San Francisco CA 94130

415.274.0660phone 415.274.0299fax

## USE PERMIT

**This Use Permit** (this "Permit") dated for reference only as July 1, 2007 is made by and between the Treasure Island Development Authority ("Authority") and \_\_\_\_\_ (Permittee").

### RECITALS

WHEREAS, pursuant to that certain Lease between the United States of America and Treasure Island Development Authority for the \_\_\_\_\_, (the "Master Lease"), by and between the Authority and the Department of Navy (the "Navy"), a copy of which is attached hereto as Exhibit A, the Authority has the right to use those certain properties located on Naval Station Treasure Island commonly known as \_\_\_\_\_, and portions of the parking areas adjacent thereto, all as more particularly shown on Exhibit B hereto (the "Premises"); and

WHEREAS, Permittee seeks to use the Premises for the purposes stated herein, subject to the terms and conditions of this Permit.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Authority and Permittee agree as follows:

**1. License.** Authority confers to Permittee a revocable, personal, non-exclusive and non-possessory privilege to enter upon and use the Premises for the limited purpose and subject to the terms, conditions and restrictions set forth below. The privilege given to Permittee under this Permit is effective only insofar as the rights of Authority in the Premises are concerned, and Permittee shall obtain any further permission necessary because of any other existing rights affecting the Premises, or any portion thereof.

**2. Inspection of Premises.** Permittee represents and warrants that Permittee has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Permittee's Agents") of the Premises and the suitability of the Premises for Permittee's intended use. Permittee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

**3. As Is; Disclaimer of Representations.** Permittee acknowledges and agrees that the Premises are being permitted and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Permit is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Permittee acknowledges and agrees that neither Authority nor any of its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns ("Authority's Agents") have made, and Authority hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities

serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Permittee's use and permitted under this Permit, (v) the safety of the Premises, whether for the use of Permittee or any other person, including Permittee's Agents or Permittee's clients, customers, vendors, invitees, guests, members, licensees, assignees or permittees ("Permittee's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

**4. Seismic Report and Structural Report.** Without limiting Section 3 above, Permittee expressly acknowledges for itself and Permittee's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Permittee has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils on Treasure Island and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that buildings and any other structures or improvements located on or about the Premises may fail structurally and collapse.

**5. Use of Premises.** Permittee may enter and use the Premises for the sole purpose of

**6. Restrictions on Use.** Permittee agrees that, by way of example only and without limitation, the following uses of the Premises by Permittee, or any other person claiming by or through Permittee, are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

**(a) Hazardous Material.** Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as such terms are defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises, or transported to or from the Premises without the prior written consent of Authority. Permittee shall immediately notify Authority when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Premises. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to Authority and in accordance with all laws and regulations, return the Premises to the condition immediately prior to the release. In connection therewith, Permittee shall afford Authority a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of

the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Premises or are naturally occurring substances in the Premises, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises.

**(b) Nuisances.** Permittee shall not conduct any activities on or about the Premises that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to Authority, to the owners or occupants of neighboring property or to the public.

**(c) Damage.** Permittee shall not do anything about the Premises that could cause damage to the Premises or any Authority property.

**(d) Parking.** Permittee shall be allowed to park up to \_\_\_\_\_ vehicles in the area designated for parking on **Exhibit B** attached hereto. To the extent practicable, Permittee shall use its best efforts to encourage ride-sharing, the use of shuttle busses or other pooled-means of transportation to and from the Premises.

**7. Alterations.** Except as otherwise expressly provided herein, Permittee shall not construct or place any temporary or permanent structures or improvements in, on, under or about the Premises, nor shall Permittee make any alterations or additions to any of existing structures or improvements on the Premises, unless Permittee first obtains Authority's prior written consent, which Authority may give or withhold in its sole and absolute discretion.

**8. Permit Fees.** In consideration of Permittee's donation of volunteer time and resources for the benefit of Island improvement projects, the Authority waives any permit fees associated with use of this space.

**9. Term of Permit.** The privilege conferred to Permittee pursuant to this Permit shall commence on \_\_\_\_\_ at \_\_\_\_\_ and shall automatically expire on \_\_\_\_\_ at \_\_\_\_\_. Moreover, if the Master Lease terminates for any reason whatsoever, this Permit shall automatically terminate.

**10. Compliance with Laws.** Permittee shall, at its expense, conduct and cause to be conducted all activities on the Premises allowed hereunder in a safe and reasonable manner and in compliance with all laws, regulations, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act) whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Premises any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that Authority is entering into this Permit in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Permittee further understands and agrees that no approval by Authority for purposes of this Permit shall be deemed to constitute approval of any federal, state, Authority or other local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals at Permittee's sole cost or limit in any way Authority's exercise of its police powers. Without limiting the foregoing, before beginning any work in the Premises, Permittee shall obtain any and all permits, licenses and approvals (collectively, "approvals") of all regulatory agencies and other third parties that are required to commence and complete the permitted work.

**11. Security.** In addition to the Permit Fee described in Section 8 above, Permittee shall pay all cost of providing the security services described on Exhibit D attached hereto.

**12. Surrender.** Upon the expiration of this Permit, Permittee shall surrender the Premises in the same condition as received, free from hazards and clear of all debris. At such time, Permittee shall remove all of its property from the Premises permitted hereunder, and shall repair, at its cost, any damage to the Premises caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.

### **13. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION**

**13.1. Release and Waiver of Claims.** Permittee, on behalf of itself and Permittee's Agents, covenants and agrees that the Authority shall not be responsible for or liable to Permittee for, and, to the fullest extent allowed by any Laws, Permittee hereby waives all rights against the Authority and releases them from, any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses"), including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the buildings thereon due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Authority (except as provided in Section 13.1(a) below). Without limiting the generality of the foregoing:

(a) Without limiting any other waiver contained herein, Permittee on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Authority from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Authority's decision to allow Permittee to use the Premises, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Authority.

(b) Permittee shall require each member and participant sign the Volunteer Waiver, which is attached hereto as Exhibit E and shall provide Authority copies of such no later than forty eight hours (48) after the expiration of the Term of Permit.

(c) Permittee covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Authority any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 13.1.

(d) In executing these waivers and releases, Permittee has not relied upon any representation or statement other than as expressly set forth herein.

(e) Permittee had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Permittee regardless of any claims of mistake.

(f) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

**13.2. Acknowledgment.** Permittee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Permit.

**13.3. Permittee's Indemnity.** Permittee, on behalf of itself and Permittee's Agents, shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Authority from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of any building located on the Premises due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Permittee or Permittee's Agents or Permittee's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Permittee's Agents and Permittee's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Permittee in the observation or performance of any of the terms, covenants or conditions of this Permit to be observed or performed on Permittee's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Permittee, Permittee's Agents or Permittee's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, (f) any construction or other work undertaken by Permittee on or about the Premises whether **before** or during the Term of this Permit; or (g) any acts, omissions or negligence of Permittee, Permittee's Agents or Permittee's Invitees, or of any trespassers, in, on or about the Premises or any alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Permit and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Authority. Notwithstanding the foregoing, Permittee's obligations to indemnify the Authority under this Section 13.3 shall remain in full force and effect regardless of whether or not the Authority's decision to permit the Premises to the Permittee, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Authority. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any Loss. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by Authority and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or sooner termination of this Permit. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to this Section 13.3, Permittee shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

## 14. INSURANCE

**14.1. Permittee's Insurance.** Permittee shall procure and maintain throughout the Term of this Permit and pay the cost thereof the following insurance:

(a) Worker's Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Host Liquor Liability, Personal Injury, Broad Form Property Damage, Products and Completed Operations; and

(c) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Permittee uses, or causes to be used, any automobiles in connection with its use of the Premises.

**14.2. General Requirements.** All insurance provided for under this Permit shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Authority.

(a) Should any of the required insurance be provided under a claims-made form, Permittee shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of one (1) year beyond the expiration or termination of this Permit, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Permit, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Permittee as the insured and the "Treasure Island Development Authority, City and County of San Francisco, United States of America, acting by and through the Department of the Navy, and their officers, directors, employees and agents" as additional insureds (Insurance Certificate with Endorsement for such additional insureds).

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

**14.3. Proof of Insurance.** Permittee shall deliver to Authority certificates of insurance in form and with insurers satisfactory to Authority, evidencing the coverages required hereunder, on or before the commencement date of this Permit, together with complete copies of the policies promptly upon Authority's request. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, Authority may, at its option, procure the same for the account of Permittee, and the cost thereof shall be paid to Authority within five (5) days after delivery to Permittee of bills therefor.

**14.4. No Limitation on Indemnities.** Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations herein or any of Permittee's other obligations or liabilities under this Permit.

**14.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Permit, Authority may elect in Authority's sole and absolute discretion to terminate this Permit upon the lapse of any required insurance coverage by written notice to Permittee.

**14.6. Permittee's Personal Property.** Permittee shall be responsible, at its expense, for separately insuring Permittee's Personal Property.

**14.7. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Authority and Permittee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Permittee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Permittee shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Authority or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

**15. No Assignment.** This Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred by Permittee under any circumstances.

**16. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**17. Non-Discrimination.** Permittee shall not, in the operation and use of the Premises, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, gender identity, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapters 12B and 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by reference and made a part hereof as though fully set forth herein. Permittee agrees to comply with all of the provisions of such Chapters 12B and 12C that apply to parties contracting with the City and County of San Francisco.

**18. Tropical Hardwoods and Virgin Redwood.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood product.

**19. No Tobacco Advertising.** Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority, including the property which is the subject of this Permit. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

**20. Security Deposit.** Not Applicable.

**21. Rules and Regulations.** In connection with the Permittee's use hereunder, Permittee shall comply with the Rules and Regulations attached hereto as Exhibit F.

**22. General Provisions.** (a) This Permit may be amended or modified only by a writing signed by Authority and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (e) Time is of the essence. (f) This Permit shall be governed by California law and Authority's Charter. (g) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of Authority shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (h) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (i) Permittee may not record this Permit or any memorandum hereof. (j) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (k) Any sale or conveyance of the property burdened by this Permit by Authority shall automatically revoke this Permit. (l) This Permit may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**PERMITTEE:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TREASURE ISLAND  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

Mirian Saez  
Director of Island Operations

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA,**  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney



CITY & COUNTY OF SAN FRANCISCO

TREASURE ISLAND DEVELOPMENT AUTHORITY  
410 AVENUE OF THE PALMS,  
BLDG. ONE, 2<sup>ND</sup> FLOOR, TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660 FAX (415) 274-0299  
WWW.SFGOV.ORG/TREASUREISLAND



MIRIAN SAEZ  
DIRECTOR OF ISLAND OPERATIONS

## WAIVER AND RELEASE FORM

In consideration for being granted permission to work as a volunteer on Treasure Island and/or Yerba Buena Island (the "Volunteer Work Assignment"), I, the undersigned volunteer ("Volunteer"), agree that (1) the Treasure Island Development Authority, the United States Navy, the City and County of San Francisco, and any of their respective officers, directors, agents or employees (collectively, the "Treasure Island Parties"), shall not be responsible or liable to Volunteer for any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits or other proceedings, including, but not limited to, incidental or consequential damages and attorneys fees, relating to any injury, accident or death of any person, or loss or damage to property of any kind (collectively, "Losses"), arising out of or in any way relating to the Volunteer Work Assignment, and (2) to the fullest extent allowed by any laws, Volunteer hereby waives all rights against the Treasure Island Parties and releases them from any and all Losses arising out of or in any way relating to the Volunteer Work Assignment.

In executing this Waiver and Release, Volunteer has not relied on any representations or warranties as to the safety of the Volunteer Work Assignment or the condition of the property on which the Volunteer Work Assignment will be performed.

"Volunteer"

\_\_\_\_\_

Print Name: \_\_\_\_\_

Organization \_\_\_\_\_

Date: \_\_\_\_\_

Date(s) of Volunteer Work Assignment: \_\_\_\_\_







1 [Election of Officers of the Treasure Island Development Authority.]  
2

3 **Resolution Approving the Election of Officers of the Treasure Island Development**  
4 **Authority, as Nominated by the Ad Hoc Nomination Committee to Serve for a Twelve**  
5 **Month Term Beginning July 1, 2007 and Ending June 30, 2008**  
6

7 WHEREAS, Under the Treasure Island Development Authority ("TIDA") Bylaws,  
8 officers of the Board of Directors (the "Board") are to be chosen annually; and,

9 WHEREAS, The TIDA Bylaws allow the Board to create one or more committees  
10 consisting of two or more Directors to serve at the pleasure of the Board; and,

11 WHEREAS, At the May 9, 2007 TIDA meeting, the Board adopted a resolution  
12 establishing an Ad Hoc Nomination Committee, and 3 members were appointed by the  
13 President of the Board to serve as members of the TIDA Ad Hoc Nomination Committee; and,

14 WHEREAS, This committee met on June 13th, 2007 to consider and nominate Officers  
15 for the TIDA Board of Directors, and the Ad Hoc Nomination Committee has reported its  
16 nominations to the full TIDA Board for consideration at its June 13th, 2007 regular meeting;  
17 now therefore be it

18 RESOLVED, THAT the Board hereby elects \_\_\_\_\_ to serve as President  
19 of the TIDA Board, \_\_\_\_\_ to serve as Secretary of the TIDA Board, and  
20 \_\_\_\_\_ to serve as Chief Financial Officer of the TIDA Board, for the twelve  
21 (12) month period beginning July 1, 2007 and ending on June 30, 2008.  
22  
23  
24  
25

**CERTIFICATE OF SECRETARY**

**I hereby certify that I am the duly elected Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on June 13th, 2007.**

\_\_\_\_\_  
John Elberling, Secretary















## TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,  
BLDG. ONE, 2<sup>ND</sup> FLOOR, TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660 FAX (415) 274-0299  
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DRAFT Minutes of Meeting  
Treasure Island Development Authority  
June 13, 2007

City Hall, Room 400

1 Carlton B. Goodlett Place  
San Francisco, CA

1. **Call to Order:** 1:33 PM

**Roll Call** Present: Claudine Cheng (Chair)  
Jesse Blout  
Jared Blumenfeld  
John Elberling  
Marcia Rosen  
Owen Stephens

Excused: Matthew Franklin  
Supervisor Chris Daly

DOCUMENTS DEPT

JUL 09 2007

SAN FRANCISCO  
PUBLIC LIBRARY**2. Report by Director of Island Operations**

Ms. Mirian Saez, Director of Island Operations, presented the Director's Report. Discussed work progressing in emergency preparedness planning, coordination with the San Francisco Police Department, MOU with the Public Utilities Commission which was forwarded to the PUC on May 9<sup>th</sup>, Board of Supervisors hearings regarding the Treasure Island budget, and coordination with the John Stewart Company on rehabilitation of the 54 TIHDI transfer units. Stated two grocery store proposals were reviewed by third parties, both proposals lacked pertinent data necessary to conduct a full analysis of the proposals. CalTrans has announced a Bay Bridge closure during Labor Day weekend. Met with Nat Ford, Director of MTA, to discuss MUNI 108 issues; MTA has decided that the 108 schedule over Labor Day weekend will be a regular and not holiday schedule. Discussed a debriefing meeting held to discuss the recent building fire on Treasure Island. Over 8,000 pounds of outdated and broken electronic waste was removed from the Navy surplus warehouse in coordination with Goodwill Industries, the second such e-waste removal. Discussed recent meetings with Captain O'Leary of the Police Department, Benji Williams the new Director of Job Corps, and a walkabout with Island residents. Stated she has granted no new six month leases, but granted fee waivers to the Life

Learning Academy for its picnic and student art exhibit in Building 1, PriceWaterhouseCoopers for their staff volunteer day and TIHDI for the Flea Market and Craft Faire.

Director Cheng asked what plans were for soliciting for a grocery store.

Ms. Saez stated that she would like to use criteria presented in the reviews to start talking to grocery store operators and other parties to see what the possibilities are for a grocery store. There are also other alternatives available. At this point staff is still gathering information so that if it is found viable a formal solicitation should be produced.

#### **4. Communications**

There was no discussion of the Communications.

#### **5. Report by the Treasure Island/Yerba Buena Island Citizen Advisory Board**

A written CAB report was provided this month.

There was no discussion of this item.

#### **6. Ongoing Business by Directors**

Director Blumenfeld requested an organizational chart that highlighted the relationship between TIDA and the Office of the City Administrator, especially as it related to the performance review for the Director of Island Operations

#### **3. Report by the Office of Base Reuse and Development (*called out of order*)**

Mr. Jack Sylvan, Office of Base Reuse and Development, provided a report. Discussed the redevelopment forward schedule including the major components necessary to negotiate the DDA, negotiate the land transfer with the US Navy, and complete a redevelopment plan. Several elements were deferred to the DDA process including the developing the Design for Development. In terms of the DDA elements, staff is currently working on the Transition Plan and has started working with the PUC on identifying financing for the wastewater treatment plant. TICD is working on a proposal for use of the two hangars.

Director Elberling asked for more detail on why the transfer timeline has been pushed back.

Mr. Sylvan stated that getting to a Term Sheet with the Navy has taken more time than they thought and staff is still contemplating an early transfer of environmental responsibilities which would take place after conveyance of the property with the Navy Term Sheet already in place. Stated it is a conservative schedule.

Director Elberling asked why the early transfer process is planned to take so long.

Mr. Sylvan stated this process requires negotiating the deal with the Navy and assuming their responsibilities, as well as having agreements with the appropriate regulatory agencies and approval by the Governor's Office. Staff has always assumed that TIDA would be getting the property from the Navy well in advance of a development agreement and remediation work would be initiated prior to a development process. Because of the delay in the process with the Navy, it will now make more sense to have the master developer integrate the clean-up along with the infrastructure work.

Director Blumenfeld asked that staff provide a more specified timeline for the Transition Plan, Wastewater Treatment Plan and Design for Development.

Director Blout stated that from his perspective of prior Navy negotiations, 14 months is a reasonable schedule for Treasure Island.

Mr. Sylvan discussed the progress of the three Treasure Island legislative items in the State Legislature: SB 163, SB 815, and AB 1543.

Director Rosen asked if the State Lands Commission is amenable that there might not have to be an exchange in the possibility that Job Corps land reverts back to the City.

Mr. Sylvan stated that rather than doing an appraisal, the Trust requirements would be extinguished on the lands removed without requiring an exchange of lands.

## **7. General Public Comment**

Mr. Marc Connors, Treasure Island Good Neighbors community group, discussed recent on-island community events.

Ms. Leah Shahum, San Francisco Bicycle Coalition, spoke in support of a bicycle and pedestrian planning process funded by the Department of Public Health that will be undertaken soon for Treasure and Yerba Buena Island.

Ms. Eve Bach, ARC Ecology, spoke in support of testing the transportation district and congestion management pricing in court to resolve that it is legal before the development starts and there is a larger population on the Island.

## **8. Consent Agenda**

Ms. Saez requested that Item 8(e) be removed from the Consent Agenda and continued to the next meeting.

Director Blout motioned for the continuation of Item 8(e) to the July meeting.

Director Cheng seconded the motion.

Item 8(e) was continued to the July meeting unanimously.

There was no public comment on the remainder of the Consent Agenda.

Director Rosen motioned for approval of Consent Agenda items 8a, b, c, d, f and g.

Director Blout seconded the motion.

The Consent Agenda items 8 a, b, c, d, f and g were approved unanimously.

## **9. Fifth Amendment to Contract with CH2M Hill**

Mr. Jack Sylvan, Office of Base Reuse and Development, presented the fifth amendment to the contract with CH2M Hill. CH2M Hill has acted as the Authority's environmental remediation contractor for the past several years. As the negotiations with the Navy and the DDA process are now closer in timing, staff has determined that it makes more sense to have the developer assume the responsibility for remediation. This item terminates the contract with CH2M Hill. TICD is

moving to hire a firm which provides the same services that CH2M Hill provides to TIDA. TIDA will retain Geomatrix to monitor the Navy's remediation work and to assure that the remediation negotiations with the Navy are in the best interest of TIDA. In addition to the \$500,000 paid for work done, there are no further penalties for termination of the contract.

Director Blumenfeld asked if the Term Sheet Pro-Forma contemplated a clean-up cost to TIDCD. Mr. Sylvan stated it does. Stated that staff and TIDCD work in partnership on the negotiations with the Navy, and are in agreement about the work necessary and the avenues available for completing the remediation work.

Director Rosen stated that there is a theoretical potential for the developer to favor a path that would be less costly but would be opposed to what the Authority would favor for the purposes of the public benefit. The public-interest protection the Authority has is the peer-review and advisory work performed for the Authority by Geomatrix.

**Public Comment:**

Ms. Eve Bach, ARC Ecology, spoke in support of further investigation of the financial implications of the transfer of such responsibilities to TIDCD.

Director Rosen motioned to amend the resolution to reflect the Authority's ongoing relationship with Geomatrix.

Director Blout seconded the motion to amend.

Director Blumenfeld motioned for approval as amended.

Director Rosen seconded the motion.

The item was approved unanimously as amended.

**10. Information Presentation by the Water Transit Authority**

Mr. Steve Castleberry, Water Transit Authority (WTA) Executive Director, provided an update on the fuel-cell ferry grant earmarked for Treasure Island ferry service. Discussed the background of the project, including the history of the project. The project was conceived as a demonstration project of the first fuel-cell powered ferry in the world. Ferry is being constructed through a grant from the Federal Highway Administration, and the grant was given simply to construct a ferry. The FHWA looked at the grant as a transportation project, not an environmental project. FHWA ultimately stated that as this was a transit grant it was expected to be an operating resource, not a demonstration project. There have been several delays due to issues with the granting agency, the company which supplies fuel cells and the lack of bidders for construction of the ferry. Also, the WTA is expected to utilize this vessel in regular service, not as a demonstration-only vessel as originally envisioned. The design and size of this vessel in turn creates problems when contemplating incorporation into regular service. Stated a contract has been awarded to a shipbuilder and these vessels will be the cleanest vessels in the world with regards to emissions. The grant initially came from the office of Speaker Pelosi; as such, the WTA has had discussions with her office about solutions. Stated this project has been frustrating for the WTA.

Director Elberling asked what the role of the Authority is in this project.

Mr. Castleberry stated that the grant initially envisioned the boat servicing Treasure Island, but the Authority is not the grant recipient.

Director Blumenfeld advocated continued work towards water-oriented transit to and from Treasure Island, whether it is ferries or water taxis. If these methods are not pursued continuously, it will be difficult to gain funding later down the line for such Island-related transport.

Director Rosen asked if the WTA is proposing to move the grant money from Treasure Island transportation to South San Francisco transportation. The original grant proposal conceived of Treasure Island service. Asked if there is a use acceptable to the grantor which could go towards ferry transportation planning for Treasure Island at a later date.

Mr. Sylvan stated that staff would be happy to discuss this issue with the WTA both in terms of the current project as well as future planning.

**Public Comment:**

Mr. Jim Hanford, Public Utilities Commission, spoke in support of the PUC's technical assistance on such projects.

Ms. Terri Shore, Friends of the Earth, spoke in support of alternative ferry technology on San Francisco Bay and its incorporation into Treasure Island transportation planning.

Director Elberling stated that since it is going to be at least 5 years before there is a ferry terminal on Treasure Island, it would not be a good use of Federal funds to sit on the funds for Treasure Island for another several years. Stated he preferred if the funding was sent to the best available use in the near term.

Director Blout left the TIDA Board at 2:55 PM

**11. Approval of Professional Services Agreement with Treasure Island Homeless Development Initiative**

Ms. Mirian Saez, Director of Island Operations, presented the yearly professional services agreement between the Authority and the Treasure Island Homeless Development Initiative (TIHDI). Stated that this agreement continues TIHDI's role as coordinator of community-based homeless service organizations, operator of the Job Broker system, and reviewer in the development process. This contract has changed from last year in that the funding for Boys and Girls Clubs is deleted in anticipation of TIDA contracting directly with the Boys and Girls Clubs, and the funding for Common Area Maintenance funding has been deleted as well. This CAM charge will be incorporated into a new sublease with TIHDI for their space in the Administration Building which will be brought before the Board at the July meeting.

Director Rosen thanked TIHDI for their contribution to community building and their on-going work on the Islands.

**Public Comment:**

Ms. Sherry Williams, TIHDI Executive Director, thanked the Board for their continued support. Also thanked Director Saez for her work with TIHDI and her work supporting the Job Broker system.

Director Rosen motioned for approval.  
Director Blumenfeld seconded the motion.  
The item was approved unanimously.

**12. Approval of Sublease with San Francisco Golden Gate Rugby Club**

Ms. Saez requested that Item 12 be continued to the next meeting.

There was no Public Comment on this item.

Director Rosen motioned to continue this item to the July meeting.  
Director Blumenfeld seconded the motion to continue.  
The motion to continue was approved unanimously.

**13. Informational Presentation on TIDA Volunteer Policy**

Ms. Marianne Thompson, TIDA Community Liaison, presented the draft TIDA Volunteer Policy. TIDA has seen a recent increase in requests for organizations to volunteer on the Islands. This policy allows for a simplified and transparent process for volunteerism on the Island, as well as limits TIDA liability in accordance with the Navy's stipulations in the Master Lease.

Director Cheng asked why the term "Facility Use" is used in the application packet for volunteers.

Ms. Saez stated that the current policy requires a permit. This policy simply clarifies the process without changing the current operating procedures. Technically, the groups would still be using the premises.

Director Saez stated that she would be happy to take any further comments on this policy in writing before the July Board meeting.

There was no Public Comment on this item.

**14. Election of Officers of the Treasure Island Development Authority Board**

Director Stephens, Chair of the Board's Ad-Hoc Nomination Committee, reported that the committee met on June 13<sup>th</sup> and voted to continue the meeting to July 11<sup>th</sup> at 1:00 PM. No nominations were made for forwarding to the full Board at the Committee's June 13<sup>th</sup> meeting.

There was no Public Comment on this item.

Director Rosen motioned to continue the item to the July 11<sup>th</sup> meeting.  
Director Franklin seconded the motion for continuation.  
The motion to continue was approved unanimously.

**15. Discussion of Future Agenda Items by Directors**

There was no discussion on this item.

There was no Public Comment on this item.

**16. Closed Session for Conference with Real Property Negotiator**

There was no Public Comment on this item.

Director Elberling motioned to move the Authority Board into Closed Session.

Director Blumenfeld seconded the motion to move to Closed Session.

The motion to move to closed session was approved unanimously.

The Authority Board went to closed session at 3:39 PM

Participants of Closed Session:

TIDA Board of Directors

Jack Sylvan, Office of Base Reuse and Development

Mirian Saez, Director of Island Operations

Peter Summerville, TIDA Commission Secretary

Deputy City Attorney Eileen Malley

The Authority Board returned to Open Session at 4:03 PM

Director Elberling motioned not to disclose the contents of the Closed Session.

Director Blumenfeld seconded the motion not to disclose.

The motion not to disclose was approved unanimously.

**17. Adjourn**

Director Cheng motioned for adjournment at 4:04 PM.



